TEXAS REGISTER

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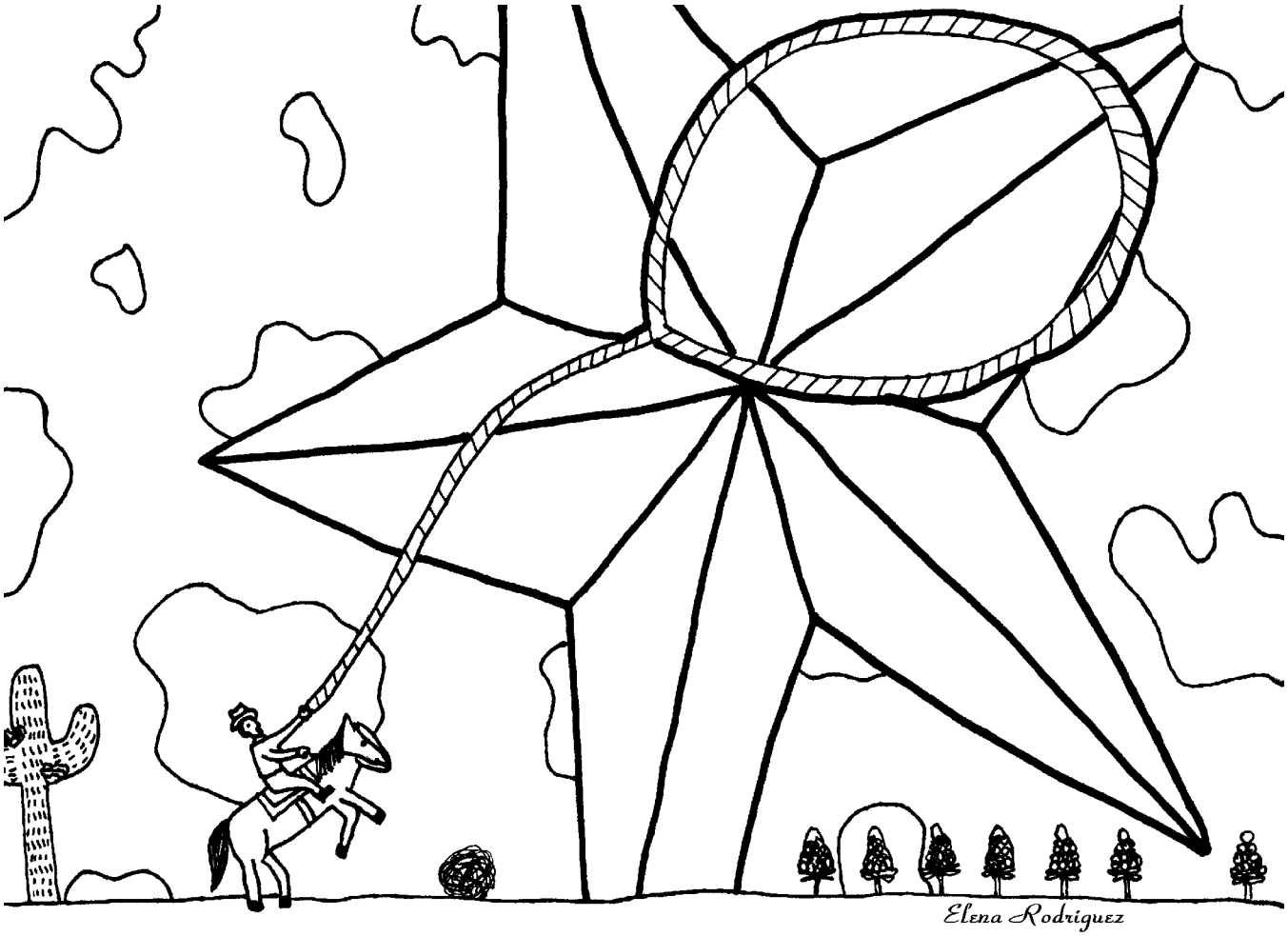

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

The artwork featured on the front cover is chosen at random. Inside each issue, the artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*.

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IN THIS ISSUE

THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Appointments

Appointments for September 8, 2005

Designating Melanie G. Thompson of Canyon Lake as Presiding Officer of the Texas State Board of Public Accountancy for a term at the pleasure of the Governor. Ms. Thompson is replacing Billy Atkinson as Presiding Officer.

Designating Debbie Hanna as Presiding Officer of the Texas Council on Alzheimer's Disease and Related Disorders for a term at the Pleasure of the Governor.

Appointed to the Texas Commission of Licensing and Regulation for a term to expire February 1, 2009, Mike Arismendez, Jr. of Shallowater (replacing Frank Denton who resigned).

Appointed to the Texas State Board of Dental Examiners for a term to expire February 1, 2011, William Lindsay Purifoy, D.D.S. of Fort Worth (replacing James Irons of Austin whose term expired).

Appointed to the Texas State Board of Dental Examiners for a term to expire February 1, 2011, Russell H. Schlattman, II, D.D.S. of Houston (replacing Nathaniel Tippit of Houston whose term expired).

Appointed to the Texas State Board of Dental Examiners for a term to expire February 1, 2011, Georgiana M. Matz of Harlingen (replacing Amy Juba of Amarillo whose term expired).

Appointed to the Texas State Board of Dental Examiners for a term to expire February 1, 2011, Tamela L. Gough, D.D.S. of McKinney (replacing Martha Malik of Victoria whose term expired).

Appointed to the San Jacinto Historical Advisory Board for a term to expire September 1, 2011, Janet Ann DeVault of Houston. Ms. DeVault is being reappointed.

Appointed to the Texas State Board of Public Accountancy for a term to expire January 31, 2011, Paula Mendoza of Houston (Reappointment).

Appointed to the Texas State Board of Public Accountancy for a term to expire January 31, 2011, Gregory Lee Bailes of Bee Cave (replacing Billy Atkinson of Sugar Land whose term expired).

Appointed to the Texas State Board of Public Accountancy for a term to expire January 31, 2011, Dorothy Fowler of Corpus Christi (replacing April Eyeington of College Station whose term expired).

Appointed to the Texas State Board of Public Accountancy for a term to expire January 31, 2011, John W. Dunbar of El Paso (replacing Robert Mann of Fort Worth whose term expired).

Appointed to the Texas State Board of Public Accountancy for a term to expire January 31, 2011, James W. Pollard of Canadian (replacing Kim Dryden of Amarillo whose term expired).

Appointed to the Texas Medical Board for a term to expire April 14, 2011, Julie K. Attebury of Amarillo (replacing Nancy Seliger of Amarillo whose term expired).

Appointed to the Texas Council for Developmental Disabilities for a term to expire February 1, 2011, Crece Palmer of Watauga (replacing Raul Acosta of Lubbock whose term expired).

Appointed to the Texas Council for Developmental Disabilities for a term to expire February 1, 2011, Mary M. Durheim of McAllen (Reappointment).

Appointed to the Texas Council for Developmental Disabilities for a term to expire February 1, 2011, Kristine K. Bissmeyer of San Antonio (Reappointment).

Appointed to the Texas Council for Developmental Disabilities for a term to expire February 1, 2011, Marcia Jeanne Dwyer of Plane (Reappointment).

Appointed to the Texas Council for Developmental Disabilities for a term to expire February 1, 2011, Joe Alfredo Rivas of Denton (Reappointment).

Appointed to the Governor's Committee on People with Disabilities for a term to expire February 1, 2006, Douglas F. Grady, Jr. of Fort Worth (Reappointment).

Appointed to the Governor's Committee on People with Disabilities for a term to expire February 1, 2006, Peter Grojean of San Antonio (Reappointment).

Appointed to the Governor's Committee on People with Disabilities for a term to expire February 1, 2006, Kathy S. Strong of Garrison (Reappointment).

Appointed to the Governor's Committee on People with Disabilities for a term to expire February 1, 2006, Nancy Kay Shugart of Austin (Reappointment).

Appointed to the Governor's Committee on People with Disabilities for a term to expire February 1, 2006, Judy C. Scott of Dallas (Reappointment).

Appointed to the Governor's Committee on People with Disabilities for a term to expire February 1, 2006, Edward N. Looby of Alvin (replacing Laurie Redd whose term expired).

Appointments for September 9, 2005

Appointed to the Texas Growth Fund Board of Directors for a term to expire February 1, 2009, Robert J. Ellis of Austin (replacing Catherine Woodruff of Houston whose term expired).

Appointments for September 13, 2005

Appointed as Judge of the 138th Judicial District Court, Cameron/Willacy Counties, for a term until the next General Election and until his successor shall be duly elected and qualified, J. Rolando Olvera, Jr. of Brownsville. Judge Olvera is replacing Judge Roberto Garza who retired.

Appointed to the Texas State Board of Public Accountancy for a term to expire January 31, 2009, James Flagg, Ph.D. of College Station (replacing Ed Summers of Austin whose term expired).

Appointed to the Texas Mutual Insurance Company Board of Directors for a term to expire July 1, 2011, Jacob M. Monty of Houston (replacing Marion Brem of Corpus Christi whose term expired).

Appointed to the Texas Mutual Insurance Company Board of Directors for a term to expire July 1, 2011, Richard A. Cooper of Lubbock (Reappointed).

Appointed to the Texas Board of Chiropractic Examiners for a term to expire February 1, 2011, Kenya S. Woodruff of Plano (replacing Paul Dickerson of Houston whose term expired).

Appointed to the Texas Board of Chiropractic Examiners for a term to expire February 1, 2011, Kathleen S. Summers, D.C. of Andrews (replacing Serge Francois of Irving whose term expired).

Appointed to the Texas Board of Chiropractic Examiners for a term to expire February 1, 2011, Kenneth Mack Perkins, D.C. of Conroe (replacing Robert Coburn of West Columbia whose term expired).

Rick Perry, Governor

TRD-200504108

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THE ATTORNEY GENERAL

Under provisions set out in the Texas Constitution, the Texas Government Code, Title 4, §402.042, and numerous statutes, the attorney general is authorized to write advisory opinions for state and local officials. These advisory opinions are requested by agencies or officials when they are confronted with unique or unusually difficult legal questions. The attorney general also determines, under authority of the Texas Open Records Act, whether information requested for release from governmental agencies may be held from public disclosure. Requests for opinions, opinions, and open records decisions are summarized for publication in the *Texas Register*. The attorney general responds to many requests for opinions and open records decisions with letter opinions. A letter opinion has the same force and effect as a formal Attorney General Opinion, and represents the opinion of the attorney general unless and until it is modified or overruled by a subsequent letter opinion, a formal Attorney General Opinion, or a decision of a court of record. You may view copies of opinions at http://www.oag.state.tx.us. To request copies of opinions, please fax your request to (512) 462-0548 or call (512) 936-1730. To inquire about pending requests for opinions, phone (512) 463-2110.

Request for Opinions

RQ-0389-GA

Requestor:

The Honorable Helen Giddings

Chair, Committee on Business and Industry

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Authority of a school district to contract in specific circumstances (RQ-0389-GA)

Briefs requested by October 16, 2005

RQ-0390-GA

Requestor:

The Honorable Ronald D. Hankins

Somervell County Attorney

Post Office Box 1335

Glen Rose, Texas 76043

Re: Authority of a municipality to impose a hotel occupancy tax in the area of its extraterritorial jurisdiction (RQ-0390-GA)

Briefs requested by October 16, 2005

RQ-0391-GA

Requestor:

The Honorable Dianne White Delisi

Chair, Committee on Public Health

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Authority of the Private Security Board to adopt certain rules regulating newly registered alarm installers (RQ-0391-GA)

Briefs requested by October 19, 2005

RQ-0392-GA

Requestor:

Mr. Albert Hawkins

Executive Commissioner

Texas Health and Human Services Commission

Post Office Box 13247

Austin, Texas 78711

Re: Whether a local mental health and mental retardation authority is required to serve as the provider of last resort of both mental health and mental retardation services under section 533.035, Health and Safety Code (RQ-0392-GA)

Briefs requested by October 19, 2005

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-200504228
Stacey Schiff
Deputy Attorney General
Office of the Attorney General
Filed: September 21, 2005

♦ ♦ ♦

Opinions

Opinion No. GA-0354

Mr. Rex Emerson

Kerr County Attorney

County Courthouse, Suite BA-103

700 Main Street

Kerrville, Texas 78028

Re: Whether an elected public official may accept payment for completing a term as president of a private association of elected public officials (RQ-0324-GA)

S U M M A R Y

A payment by a private association of public officials, compensating one of its members for services as its immediate past president, does not per se violate Penal Code sections 36.07, concerning prohibited honoraria, or 36.09, concerning the offer of a gift to a public servant.

Section 36.07 does not prohibit fair compensation to a person for services as the president of a private association, assuming the person was elected president because of the person's skills and abilities and not because the person is a public servant of a particular county or district. Section 36.09 does not prohibit payment to a person for legitimate consideration rendered in a capacity other than as a public servant.

Opinion No. GA-0355

The Honorable Robert R. Puente

Chair, Committee on Natural Resources

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether two persons who have been elected to serve as directors of the Bexar Metropolitan Water District, but whose elections have not yet been certified, and who have not yet taken the oath of office, should be counted as directors for purposes of determining the presence of a quorum under the Open Meetings Act, chapter 551, Government Code (RQ-0326-GA)

S U M M A R Y

Two persons who had been elected to serve as directors of the Bexar Metropolitan Water District, but whose elections had not yet been certified, and who had not yet taken the oath of office, should not be counted as directors for purposes of determining the presence of a quorum under the Open Meetings Act, chapter 551, Government Code. A meeting between the newly elected but not yet sworn in directors and two currently serving directors did not constitute a "meeting" for purposes of the Act because no quorum of the district board was present.

Opinion No. GA-0356

The Honorable Jeri Yenne

Brazoria County Criminal District Attorney

111 East Locust Street

Angleton, Texas 77515

Re: Retroactive application of municipal term limit provisions (RQ-0327-GA)

S U M M A R Y

An opinion of the Attorney General will not construe city charters unless the charter provision raises a question of state or federal law. If a city charter term limit provision applies to service as a city officer prior to its adoption, it does not impair a vested right and therefore is not a "retroactive law" prohibited by article I, section 16 of the Texas Constitution.

Opinion No. GA-0357

The Honorable William M. Jennings

Gregg County Criminal District Attorney

101 East Methvin Street, Suite 333

Longview, Texas 75601

Re: The meaning of "district judges trying criminal cases" in Government Code section 76.002 (RQ-0330-GA)

S U M M A R Y

The phrase "district judges trying criminal cases" in Government Code section 76.002 means a district judge who regularly examines criminal matters that involve a Government Code chapter 76 program or facility.

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-200504197
Stacey Schiff
Deputy Attorney General
Office of the Attorney General
Filed: September 21, 2005

EMERGENCY RULES

Emergency Rules include new rules, amendments to existing rules, and the repeals of existing rules. A state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice. An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days (Government Code, §2001.034). An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days. (Government Code, §2001.034).

TITLE 13. CULTURAL RESOURCES

PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

CHAPTER 2. GENERAL POLICIES AND PROCEDURES

SUBCHAPTER C. GRANT POLICIES

DIVISION 8. TEXAS RESPONDS GRANTS

13 TAC §§2.180 - 2.185

The Texas State Library and Archives Commission adopts on an emergency basis new rules §§2.180 - 2.185. These sections establish the guidelines for the administration of a new grant program for Texas public libraries, Texas Responds Grants, with the purpose of assisting local governments to provide public library services to those affected by Hurricane Katrina and its aftermath. These sections set forth the general terms, conditions, criteria, and decision making process for awarding these grants. Grants will aid local Texas communities to provide, on an expedited basis, valuable information and library services for those affected by this disaster.

This new rule is adopted on an emergency basis to ensure that grant funding can be awarded to the state's public libraries with the least delay and inefficiency. Without the adoption of this new rule on an emergency basis, the grant funds could not fully, efficiently, or effectively reach the impacted communities.

This new rule is adopted on an emergency basis under the authority of Government Code 441.0091, concerning the Grant Program for Local Libraries, that provides the Commission authority to provide for grants to meet specific information needs of residents and specific needs of local libraries, and to adopt by rule the guidelines for awarding grants.

The authority to expedite the grant review and approval process is the September 1, 2005 proclamation of Governor Rick Perry, and any subsequent renewals or amended proclamations regarding this disaster.

§2.180. Goals and Purposes.

This grant program provides funds to communities that have been affected by Hurricane Katrina and its aftermath. The grants are to assist Texas communities that are providing public library services to people impacted by this disaster. Programs involving collaboration with other community organizations are encouraged. The director and librarian may designate specific funding priorities for grants, in response to identified needs. Because of the need for rapid assistance, commission staff will conduct an expedited grant application, review and awarding process.

§2.181. Eligible Applicants.

The governing authority of a Texas community (city, county, corporation, or district) is eligible to apply for a grant to assist it in providing public library services to people affected by this disaster. To receive a grant, applicants must be members of the Texas Library System in State Fiscal Year 2006.

§2.182. Eligible Expenses.

(a) This grant program will fund operating expenditures such as staff, supplies, library materials, equipment, and contractual services. To be eligible, grant expenses must be reasonable and in accordance with appropriate state or local operating policies and procedures. Further, all grant expenses must be designed to respond directly to this disaster.

(b) This grant program will not fund the following:

(1) Capital expenditures related to the purchase of real property, buildings, or motor vehicles.

(2) Capital expenditures related to the construction or expansion of facilities.

(3) Capital expenditures related to renovation costs.

(4) Other expenditures not allowed by the Uniform Grant and Contract Management Act (Government Code Chapter 783).

(5) Food, beverages, gifts, prizes;

(6) Equipment or technology not specifically needed for the disaster-related services or programs;

(7) Collection development projects not specifically associated with the disaster-related services or programs;

(8) Advertising or public relations costs not directly related with promoting disaster-related activities;

(9) Entertainment expenses (e.g., performers) not directly related to disaster-related services or programs;

(10) Transportation/travel for program participants; or

(11) Indirect costs, administrative overhead, or other non-library service costs.

§2.183. Criteria for Award.

Applications will be evaluated based on the following criteria:

(1) Needs Assessment. Describe how the community has been impacted by this disaster. Describe the library service area, the number of evacuees served, the number of sites served, needs and anticipated outcomes. (50 points)

(2) Program description. Provide a detailed description of the materials, services, and/or activities to be funded. Describe any collaborations planned with community or state organizations. (25 points)

(3) Budget. Provide a detailed budget. This may represent expenses that the applicant has incurred for which they are seeking full

or partial reimbursement, or may represent future, planned expenses. (25 points)

§2.184. Grant Review and Award Process.

(a) Applicants may submit grant applications based on the program guidelines issued by the commission.

(b) Commission staff will review and score grants based on the criteria for award, under an expedited process.

(c) Applications with significant errors, omissions, or eligibility problems will not be scored.

(d) Applicants that are awarded full or partial funding by the director and librarian will receive the full approved grant award quickly as possible, upon receipt of an executed contract.

(e) Commission staff may request additional information from applicants and may negotiate grant programs and awards with applicants as needed.

§2.185. Decision Making Process.

(a) The director and librarian will make all decisions regarding the funding of the applications.

(b) The State Library and Archives Commission will be informed of the funding decisions.

(c) At an open meeting, the State Library and Archives Commission may hold a public hearing to consider petitions of applicants that did not receive full funding.

(d) The commission or the director and librarian may award additional grants, based on the availability of funds.

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 12, 2005.

TRD-200504021
Edward Seidenberg
Assistant State Librarian
Texas State Library and Archives Commission
Effective Date: September 12, 2005
For further information, please call: (512) 463-5459

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TITLE 22. EXAMINING BOARDS

PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 101. DENTAL LICENSURE

22 TAC §101.6

The Texas State Board of Dental Examiners (Board) adopts, on an emergency basis and to be effective immediately, the addition of new §101.6, relating to the issuance of emergency provisional licenses to dentists currently licensed in Louisiana or Mississippi who have been displaced by Hurricane Katrina and require a license to provide dental services in Texas.

Texas Government Code §2001.034 allows the Board to adopt emergency rules without prior notice or hearing, or with abbreviated notice and hearing, if the Board finds that an imminent peril to the public health, safety or welfare requires adoption of a rule on fewer than 30 days notice.

On September 1, 2005, Governor Perry issued a proclamation certifying that Hurricane Katrina had created an emergency disaster and emergency conditions for people in Texas.

Further, the Board finds that a large number of dentists currently licensed in Louisiana or Mississippi have been forced to evacuate their homes and practices in those states, and are now in the State of Texas, where they must possess a license to practice their profession, either on an emergency basis to aid evacuees, or to continue to provide for themselves and their families.

The Board currently has no applicable rule allowing for a provisional license. The statutory authority to grant such licensure is currently limited to Occupations Code §256.1013, which allows for a provisional license to be granted to an applicant for licensure by credentials.

This emergency rule allows the Board to issue an emergency provisional license to a dentist licensed in good standing in Louisiana or Mississippi, who holds appropriate credentials, and who submits a complete application package to the Board.

Sherri Sanders, Interim Executive Director of the Texas State Board of Dental Examiners, has determined that for the period the section is in effect, there will be no fiscal implications for local or state government as a result of enforcing or administering the section.

The enforcement and administration of the section will benefit the public by allowing evacuees of this disaster to assist in the provision of emergency care to other evacuees, and to temporarily seek employment in their profession in the State of Texas.

There is no impact on large, small or micro-businesses.

There is no anticipated economic cost to persons as a result of enforcing or administering the section, other than a minimal application fee to the applicant.

The section is adopted on an emergency basis under Texas Government Code §2001.034, which allows the Board to adopt emergency rules without prior notice or hearing, or with abbreviated notice and hearing, if the Board finds that an imminent peril to the public health, safety or welfare requires adoption of a rule on fewer than 30 days notice. Texas Government Code §§2001.021 et seq., Texas Civil Statutes, and Texas Occupations Code §254.001, provide the Board with the authority to adopt and enforce rules necessary for it to perform its duties.

The section affects Title 3, Subtitle D of the Occupations Code and Title 22, Texas Administrative Code, Chapter 101 - 125.

§101.6. Emergency Provisional Licensure for Dentists Displaced by Hurricane Katrina.

(a) The State Board of Dental Examiners (SBDE) hereby finds that Hurricane Katrina has created an emergency disaster and emergency conditions for people in Texas, constituting an imminent peril to the public health, safety, and welfare, as set out in the proclamation of the governor dated September 1, 2005. Accordingly, the Board promulgates this emergency rule for the emergency provisional licensure of dentists.

(b) Qualifying requirements. An individual may qualify for an emergency provisional license if the individual:

(1) Is a graduate of a CODA-accredited school of dentistry in the United States, Canada, or Puerto Rico;

(2) Is currently licensed in good standing in Louisiana and/or Mississippi as a dentist, with no history of disciplinary action against any license ever held in any jurisdiction;

(3) Has, as a result of Hurricane Katrina, lost the ability to continue to practice in Louisiana or Mississippi; and,

(4) Submits a complete application and applicable fees to the SBDE.

(c) Application requirements.

(1) In order to be considered for approval, an application for an emergency provisional license under this section must contain the following items:

(A) A complete, signed, and notarized Application for Emergency Provisional License;

(B) Application fee of $50, payable by check or money order made payable to the State Board of Dental Examiners;

(C) Copy of official birth certificate, passport, or naturalization papers, if available;

(D) Proof of graduation from an accredited school of dentistry, if available;

(E) Proof of successful completion of National Board examinations, Parts I and II, if available;

(F) Proof of successful completion of a clinical examination, if available; and,

(G) Verification of licensure for each state in which licensure has been issued. Copies of licenses are acceptable, if available.

(2) If any of these documents are not available, the SBDE, in its sole discretion, will use other methods to verify the information on the application.

(3) The SBDE will conduct a criminal background check in addition to verifying professional education and licensure.

(4) An emergency provisional license may be immediately suspended or revoked upon discovery of any falsification, omission, or withholding of information.

(5) Applications must be delivered to the office of the State Board of Dental Examiners.

(6) An application for emergency provisional licensure is filed with the Board when it is actually received, date-stamped, and logged-in by the Board along with all required documentation and fees. An incomplete application for licensure and fee will be returned to the applicant within three working days with an explanation of additional documentation or information needed.

(d) Duration and expiration.

(1) Emergency provisional license applications must be received on or before January 1, 2006.

(2) An applicant may not begin to engage in any acts defined as the practice of dentistry until the emergency provisional license has been issued by the Board.

(3) All emergency provisional licenses shall expire on January 31, 2006, unless renewed.

(4) An individual holding an emergency provisional license may apply for a one-time renewal of the license, to extend it through July 31, 2006.

(5) Approximately 30 days prior to the January 31, 2006, a license renewal notice will be mailed to all emergency provisional licensees.

(6) An individual wishing to practice beyond the expiration of an emergency provisional license must apply for and obtain a Texas dental license by either examination or credentials.

(e) A copy of the Texas Dental Practice Act and SBDE rules shall be provided to each applicant receiving an emergency provisional license.

(f) Practice under emergency provisional license.

(1) Emergency provisional license certificates must be displayed in accordance with §108.11 of this title.

(2) An emergency provisional licensee must obtain a signed, written consent from each patient prior to treatment that informs the patient that the licensee is providing services under the authority of a provisional license, and that all such licenses will expire no later than July 31, 2006.

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 12, 2005.

TRD-200504019
Sherri Sanders
Interim Executive Director
State Board of Dental Examiners
Effective Date: September 12, 2005
For further information, please call: (512) 475-0972

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CHAPTER 103. DENTAL HYGIENE LICENSURE

22 TAC §103.6

The Texas State Board of Dental Examiners (Board) adopts, on an emergency basis and to be effective immediately, the addition of new §103.6, relating to the issuance of emergency provisional licenses to dental hygienists currently licensed in Louisiana or Mississippi who have been displaced by Hurricane Katrina and require a license to provide dental services in Texas.

Texas Government Code §2001.034 allows the Board to adopt emergency rules without prior notice or hearing, or with abbreviated notice and hearing, if the Board finds that an imminent peril to the public health, safety or welfare requires adoption of a rule on fewer than 30 days notice.

On September 1, 2005, Governor Perry issued a proclamation certifying that Hurricane Katrina had created an emergency disaster and emergency conditions for people in Texas.

Further, the Board finds that a large number of dental hygienists currently licensed in Louisiana or Mississippi have been forced to evacuate their homes and practices in those states, and are now in the State of Texas, where they must possess a license to practice their profession, either on an emergency basis to aid evacuees, or to continue to provide for themselves and their families.

The Board currently has no applicable rule allowing for a provisional license. The statutory authority to grant such licensure is currently limited to Occupations Code §256.1013, which allows for a provisional license to be granted to an applicant for licensure by credentials.

This emergency rule allows the Board to issue an emergency provisional license to a dental hygienist licensed in good standing in Louisiana or Mississippi, who holds appropriate credentials, and who submits a complete application package to the Board.

Sherri Sanders, Interim Executive Director of the Texas State Board of Dental Examiners, has determined that for the period the section is in effect, there will be no fiscal implications for local or state government as a result of enforcing or administering the section.

The enforcement and administration of the section will benefit the public by allowing evacuees of this disaster to assist in the provision of emergency care to other evacuees, and to temporarily seek employment in their profession in the State of Texas.

There is no impact on large, small or micro-businesses.

There is no anticipated economic cost to persons as a result of enforcing or administering the section, other than a minimal application fee to the applicant.

The section is adopted on an emergency basis under Texas Government Code §2001.034, which allows the Board to adopt emergency rules without prior notice or hearing, or with abbreviated notice and hearing, if the Board finds that an imminent peril to the public health, safety or welfare requires adoption of a rule on fewer than 30 days notice. Texas Government Code §§2001.021 et seq., Texas Civil Statutes, and Texas Occupations Code §254.001, provide the Board with the authority to adopt and enforce rules necessary for it to perform its duties.

The section affects Title 3, Subtitle D of the Occupations Code and Title 22, Texas Administrative Code, Chapter 101 - 125.

§103.6. Emergency Provisional Licensure for Dental Hygienists Displaced by Hurricane Katrina.

(a) The State Board of Dental Examiners (SBDE) hereby finds that Hurricane Katrina has created an emergency disaster and emergency conditions for people in Texas, constituting an imminent peril to the public health, safety, and welfare, as set out in the proclamation of the governor dated September 1, 2005. Accordingly, the Board promulgates this emergency rule for the emergency provisional licensure of dental hygienists.

(b) Qualifying requirements. An individual may qualify for an emergency provisional license if the individual:

(1) Is a graduate of a CODA-accredited school of dental hygiene in the United States, Canada, or Puerto Rico;

(2) Is currently licensed in good standing in Louisiana and/or Mississippi as a dental hygienist, with no history of disciplinary action against any license ever held in any jurisdiction;

(3) Has, as a result of Hurricane Katrina, lost the ability to continue to practice in Louisiana or Mississippi; and,

(4) Submits a complete application and applicable fees to the SBDE.

(c) Application requirements.

(1) In order to be considered for approval, an application for an emergency provisional license under this section must contain the following items:

(A) A complete, signed, and notarized Application for Emergency Provisional License;

(B) Application fee of $25, payable by check or money order made payable to the State Board of Dental Examiners;

(C) Copy of official birth certificate, passport, or naturalization papers, if available;

(D) Proof of graduation from an accredited school of dental hygiene, if available;

(E) Proof of successful completion of National Board examinations, if available;

(F) Proof of successful completion of a clinical examination, if available; and,

(G) Verification of licensure for each state in which licensure has been issued. Copies of licenses are acceptable, if available.

(2) If any of these documents are not available, the SBDE, in its sole discretion, will use other methods to verify the information on the application.

(3) The SBDE will conduct a criminal background check in addition to verifying professional education and licensure.

(4) An emergency provisional license may be immediately suspended or revoked upon discovery of any falsification, omission, or withholding of information.

(5) Applications must be delivered to the office of the State Board of Dental Examiners.

(6) An application for emergency provisional licensure is filed with the Board when it is actually received, date-stamped, and logged-in by the Board along with all required documentation and fees. An incomplete application for licensure and fee will be returned to the applicant within three working days with an explanation of additional documentation or information needed.

(d) Duration and expiration.

(1) Emergency provisional license applications must be received on or before January 1, 2006.

(2) An applicant may not begin to engage in any acts defined as the practice of dental hygiene until the emergency provisional license has been issued by the Board.

(3) All emergency provisional licenses shall expire on January 31, 2006, unless renewed.

(4) An individual holding an emergency provisional license may apply for a one-time renewal of the license, to extend it through July 31, 2006.

(5) Approximately 30 days prior to the January 31, 2006, a license renewal notice will be mailed to all emergency provisional licensees.

(6) An individual wishing to practice beyond the expiration of an emergency provisional license must apply for and obtain a Texas dental hygienist's license by either examination or credentials.

(e) A copy of the Texas Dental Practice Act and SBDE rules shall be provided to each applicant receiving an emergency provisional license.

(f) Practice under emergency provisional license.

(1) Emergency provisional license certificates must be displayed in accordance with §108.11 of this title.

(2) An emergency provisional licensee must obtain a signed, written consent from each patient prior to treatment that informs the patient that the licensee is providing services under the authority of a provisional license, and that all such licenses will expire no later than July 31, 2006.

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 12, 2005.

TRD-200504020
Sherri Sanders
Interim Executive Director
State Board of Dental Examiners
Effective Date: September 12, 2005
For further information, please call: (512) 475-0972

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PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 535. GENERAL PROVISIONS
SUBCHAPTER A. GENERAL PROVISIONS RELATING TO THE REQUIREMENTS OF LICENSURE

22 TAC §535.4

The Texas Real Estate Commission adopts on an emergency basis new §535.4, concerning a Temporary Emergency Salesperson License.

The new rule outlines the process and conditions the Commission will use to issue a Temporary Emergency Salesperson License. This new license type will be only available to those licensed real estate brokers and salespersons affected by Hurricane Katrina in specific states and applying for a license in Texas. A license issued under this rule will be temporary and valid until March 31, 2006. An applicant must be a licensed broker or salesperson in good standing in the affected states and must be sponsored by a Texas licensed broker. A simplified application process is outlined in the rule.

As a result of the proclamation by the Governor of the State of Texas dated September 1, 2005, declaring a state of emergency due to Hurricane Katrina, the Texas Real Estate Commission has determined that the conditions outlined in §2001.034 of the Texas Government Code concerning Emergency Rulemaking have been satisfied to adopt a new rule concerning the issuance of Temporary Emergency Salesperson Licenses to applicants from counties or parishes in Louisiana, Mississippi, and Alabama who practice or reside in areas affected by Hurricane Katrina.

The new rule is adopted on an emergency basis under The Real Estate License Act (the Act), Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purpose and intent of the Act to insure compliance with the provisions of the Act.

The statute affected by the new rule is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the new rule.

§535.4. Temporary Emergency Salesperson License.

(a) By the proclamation issued September 1, 2005, by the Governor of the State of Texas, the Texas Real Estate Commission may issue a Temporary Emergency Salesperson License to individuals who meet the following requirements:

(1) The applicant is currently licensed as a Broker or Salesperson, is in good standing, and has no current or pending disciplinary actions in the states of Louisiana, Mississippi, or Alabama;

(2) The applicant is unable to continue to practice or reside in Louisiana, Mississippi, or Alabama as a result of Hurricane Katrina;

(3) The Commission has not previously disapproved or revoked the applicant's license in Texas; and

(4) The applicant has submitted to the commission in writing a Temporary Emergency Salesperson License Application described in this section.

(b) A Temporary Emergency Salesperson License Application shall consist of the following items:

(1) Temporary Emergency Salesperson License Application form;

(2) Verification of current licensure from home jurisdiction;

(3) Verification of current disciplinary status from home jurisdiction; and

(4) Sponsorship by a Texas real estate broker licensed on a non-emergency basis.

(c) Except as provided in this section, a Temporary Emergency Salesperson License holder shall be subject to all other rules, laws, and legal requirements to which a holder of a standard license is subject.

(d) A Temporary Emergency Salesperson License issued under this section shall be valid until March 31, 2006, and may not be renewed.

(e) An applicant that has been issued a Temporary Emergency Salesperson License may apply for a standard license using the standard license application process.

(f) Temporary Emergency Salesperson License applications may be accepted for the effective duration of the proclamation by the Governor of the State of Texas.

(g) The fee, education, experience, and examination requirements of Texas Occupations Code Chapter 1101 have been waived for a Temporary Emergency Salesperson License by proclamation by the Governor of the State of Texas.

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 13, 2005.

TRD-200504028

Loretta DeHay
General Counsel
Texas Real Estate Commission
Effective Date: September 13, 2005
For further information, please call: (512) 465-3900

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SUBCHAPTER R. REAL ESTATE INSPECTORS

22 TAC §535.211

The Texas Real Estate Commission adopts on an emergency basis new §535.211, concerning a Temporary Emergency Real Estate Inspector License.

The new rule outlines the process and conditions the Commission will use to issue a Temporary Emergency Real Estate Inspector License. This new license type will be only available to those licensed home inspectors affected by Hurricane Katrina in specific states and applying for a license in Texas. An applicant must be licensed in good standing in the affected states, must show proof of completion of 8 classroom hours related to the study of Texas Standards of Practice and Rules of the Real Estate Commission, and must be sponsored by a Texas Professional Inspector. A license issued under this rule will be temporary and valid until February 28, 2006. A simplified application process is outlined in the rule.

As a result of the proclamation by the Governor of the State of Texas dated September 1, 2005, declaring a state of emergency due to Hurricane Katrina, the Texas Real Estate Commission has determined that the conditions outlined in §2001.034 of the Texas Government Code concerning Emergency Rulemaking have been satisfied to adopt a new rule concerning the issuance of Temporary Emergency Real Estate Inspector Licenses to applicants from counties or parishes in Louisiana, Mississippi, and Alabama who practice or reside in areas affected by Hurricane Katrina.

The new rule is adopted on an emergency basis under The Real Estate License Act (the Act) Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purpose and intent of the Act to ensure compliance with the provisions of the Act and Occupations Code, Chapter 1102.

The statute affected by the new rule is Texas Occupations Code, Chapter 1102. No other statute, code or article is affected by the new rule.

§535.211. Temporary Emergency Real Estate Inspector License.

(a) By the proclamation issued September 1, 2005, by the Governor of the State of Texas, the Texas Real Estate Commission (the Commission) may issue a Temporary Emergency Real Estate Inspector License to individuals who meet the following requirements:

(1) The applicant is currently licensed as a home inspector, is in good standing, and has no current or pending disciplinary actions in the state of Louisiana, Mississippi, or Alabama;

(2) The applicant is unable to continue to practice or reside in Louisiana, Mississippi, or Alabama as a result of Hurricane Katrina;

(3) The Commission has not previously disapproved or revoked the applicant's inspector license in Texas;

(4) The applicant has submitted to the commission in writing a Temporary Emergency License application described in this section.

(b) A Temporary Emergency License Application shall consist of the following items:

(1) Temporary Emergency License Application form;

(2) Verification of current licensure from home jurisdiction;

(3) Verification of current disciplinary status from home jurisdiction;

(4) Sponsorship by a Texas Professional Inspector; and

(5) Proof of completion of at least 8 classroom hours related to the study of Texas Standards of Practice and Rules of the Real Estate Commission.

(c) Except as provided in this section, a Temporary Emergency Real Estate Inspector License holder shall be subject to all other rules, laws, and legal requirements to which a holder of a standard license is subject.

(d) A Temporary Emergency Real Estate Inspector License issued under this section shall be valid until February 28, 2006, and may not be renewed.

(e) An applicant that has been issued a Temporary Emergency Real Estate Inspector License may apply for a standard apprentice, real estate, or professional inspector license using the standard license application process.

(f) Temporary Emergency Real Estate Inspector License applications may be accepted for the effective duration of the proclamation by the Governor of the State of Texas.

(g) The fee, experience, examination, and other education requirements of Texas Occupations Code Chapter 1102 have been waived for a Temporary Emergency Real Estate Inspector License by proclamation by the Governor of the State of Texas.

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 13, 2005.

TRD-200504029
Loretta DeHay
General Counsel
Texas Real Estate Commission
Effective Date: September 13, 2005
For further information, please call: (512) 465-3900

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PART 25. TEXAS STRUCTURAL PEST CONTROL BOARD

CHAPTER 593. LICENSES

22 TAC §593.25

The Texas Structural Pest Control Board (SPCB) adopts on an emergency basis new §593.25, concerning Provisional License for Louisiana and Mississippi Certified Structural Pest Control Applicators Affected by Hurricane Katrina. This rule will allow

displaced structural pest control operators from Mississippi and Louisiana to obtain a license and to perform structural pest control services in Texas while those individuals are displaced from their offices and residences in the states affected by Hurricane Katrina.

The new rule is adopted on an emergency basis to ensure that people may find gainful employment in the profession that is regulated by the SPCB.

The new rule is adopted on an emergency basis under the Occupations Code, Chapter 1951 and Government Code §418.014, which provides the SPCB authority to license individuals who are performing structural pest control.

§593.25. Provisional License for Louisiana and Mississippi Certified Structural Pest Control Applicators Affected by Hurricane Katrina.

(a) This rule is adopted pursuant to the Hurricane Katrina disaster proclamation of September 1, 2005, by Governor Rick Perry declaring an emergency disaster and emergency condition for the State of Texas and invoking Government Code §418.014 to suspend laws, rules and regulations that may inhibit or prevent prompt response for the duration of the event.

(b) An individual who is currently licensed in Louisiana or Mississippi may be issued a provisional license for comparable categories of certification within thirty (30) days of adoption of this rule under the following circumstances:

(1) The applicant furnishes a verification of state license from each state where licensed or other information sufficient for the Board to verify with the appropriate state that the person is currently licensed. Facsimile or mail verification directly by the appropriate Louisiana or Mississippi state agency is acceptable. Any applicants whose certification was denied, revoked, suspended, annulled, or probated by the appropriate Louisiana or Mississippi state agency is not eligible to license.

(2) The applicant provides all information requested by the Board on the application for provisional license.

(3) The applicant on the provisional license application indicates that:

(A) the applicant has been displaced by Hurricane Katrina and is no longer able to practice structural pest control in Louisiana or Mississippi;

(B) the applicant has read the Texas Structural Pest Control Act and the Board Rules; and

(C) the applicant will abide by the Texas Structural Pest Control Act and the Board Rules.

(c) The applicant will not begin work in Texas:

(1) prior to beginning employment with a licensed structural pest control business or after obtaining a structural pest control business license by making a provisional license application, paying the required fee, and providing proof of insurance;

(2) the applicant will inform the Board of the business location within ten (10) days of beginning work from that location; and

(3) the applicant will inform the Board of any change in the applicant's residence address within ten (10) days of the change.

(d) The Board may deny application for a provisional license for failure to submit a complete application, misrepresentation on any information that must be provided on the provisional license application, or a possessing a criminal background as provided in §593.9 of the Board Rules.

(e) An applicant granted a provisional license under this section must abide by the Texas Structural Pest Control Act and the Board Rules. The granting of a provisional license under this section constitutes limited authority to perform structural pest control in Texas. Violations of the Texas Structural Pest Control Act, Board Rules, or the provisional license will subject the licensee to disciplinary action by the Board.

(f) A provisional license issued under this section expires ninety (90) days from the date of issuance. Engaging in the business of structural pest control after the provisional license expires without obtaining a license through the normal application and examination process by the Board constitutes working without a license. The provisional license expires upon issuance of a full license or if the provisional licensee applies for full licensure and is informed by the Board of failing to pass both the General Standards category and at least one category examination.

(g) A provisional license issued under this section may not be renewed. Applicants may apply for a full license during the time period that a provisional license is held.

(h) A provisional license issued prior to expiration of this emergency rule will remain in effect until the provisional license expires even if the emergency rule is no longer in effect.

(i) The issuance of a provisional license does not restrict the Board regarding the issuance of or refusal to issue a full license on application of the provisional licensee.

(j) This rule expires on January 16, 2006.

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 15, 2005.

TRD-200504082
Murray Walton
Executive Director
Texas Structural Pest Control Board
Effective Date: September 15, 2005
For further information, please call: (512) 305-8270

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TITLE 34. PUBLIC FINANCE

PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS

CHAPTER 31. EMPLOYMENT AFTER RETIREMENT

SUBCHAPTER A. GENERAL PROVISIONS

34 TAC §31.1

The Teacher Retirement System of Texas (TRS) adopts on an emergency basis amendments to §31.1, concerning definitions related to employment after retirement ("return to work"). Specifically, the emergency amendments change the definition of "Substitute" found in subsection (b) of §31.1.

The amended section is adopted on an emergency basis pursuant to §2001.034 of the Government Code, which allows TRS

to adopt an emergency rule if a requirement of state or federal law requires adoption of the rule on less than 30 days notice. The amended section is proposed for permanent adoption elsewhere in this same issue of the *Texas Register*.

The TRS Board of Trustees ("Board") adopts the amended rule on an emergency basis so TRS can implement Senate Bill 1691, 79th Legislature, Regular Session (2005) ("SB 1691"), which became effective September 1, 2005. Subject to certain conditions and exceptions, SB 1691 requires employers who report to TRS the employment of a retiree to pay a pension or health benefit surcharge. For the health benefit surcharge to apply, the reported retiree must also be enrolled in the retirees health benefits program ("TRS-Care"). The amended definition of a substitute in §31.1 relates to the implementation of the surcharges under SB 1691. Employers do not have to pay the pension or health benefit surcharge on a retiree serving as a substitute. In addition, the amended definition will be used to determine eligible service under the related return to work exception that allows a retiree to serve as a substitute without forfeiting an annuity. The amended rule will provide employers greater clarity regarding reported retirees serving as substitutes.

The amended rule is adopted on an emergency basis under §2001.034, Government Code, relating to emergency rulemaking, to enable TRS and employers affected by SB 1691 to establish appropriate new processes, forms, publications, and programming needed to implement the surcharge provisions of SB 1691 as soon as possible. Further, the amended rule is adopted on an emergency basis to provide employers affected by SB 1691 necessary, appropriate, and timely guidance in the form of a detailed rule to use in making informed budget, programming, and other decisions for the 2005 - 2006 school year.

Statutory Authority: Section 825.102, Government Code, which authorizes the Board to adopt rules for the administration of the funds of the retirement system; §2001.034, Government Code, which authorizes the adoption of rules on fewer than 30 days' notice.

Cross-reference to Statute: Section 824.602, Government Code, relating to exceptions to loss of benefits on resumption of service; §30 of SB 1691, which establishes new §825.4092, Government Code, relating to employer contributions for employed retirees; §42 of SB 1691, which amends §1575.204, Insurance Code, relating to public school contribution under the retirees health benefits program.

§31.1. Definitions.

(a) (No change.)

(b) Substitute--For purposes of employment after retirement, a person who serves on a temporary basis in the place of a current employee and the pay does not exceed the rate of pay for substitute work established by the employer [~~daily, on-call basis in a position normally filled by another regular employee~~]. Service as a substitute that does not meet this definition is not eligible substitute service for purposes of an exception to forfeiture of annuity payments under §31.13 of this title.

(c) (No change.)

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 13, 2005.

TRD-200504041
Ronnie Jung
Executive Director
Teacher Retirement System of Texas
Effective Date: September 13, 2005
Expiration Date: January 10, 2006
For further information, please call: (512) 542-6438

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SUBCHAPTER D. EMPLOYER PENSION SURCHARGE

34 TAC §31.41

The Teacher Retirement System of Texas (TRS) adopts on an emergency basis a revised version of new §31.41, concerning the administration of an employer pension surcharge related to employment after retirement. TRS has withdrawn the version of the emergency rule adopted by the TRS Board of Trustees ("Board") on July 8, 2005 and published in the August 12, 2005, issue of the *Texas Register* (30 TexReg 4536).

The new section is adopted on an emergency basis pursuant to §2001.034 of the Government Code, which allows TRS to adopt an emergency rule if a requirement of state or federal law requires adoption of the rule on less than 30 days notice. The revised version of the new section is proposed for permanent adoption elsewhere in this same issue of the *Texas Register*.

The Board adopts the new version of the rule on an emergency basis so TRS can implement Senate Bill 1691, 79th Legislature, Regular Session (2005) ("SB 1691"), which, with certain exceptions, requires employers who report to TRS the employment of a retiree to pay a pension surcharge. The new law became effective September 1, 2005. In implementing SB 1691, the new rule will provide guidance regarding the basis for computing the surcharge as well as guidance on which reported retirees the surcharge must be paid. The new section also provides for payment of the surcharge on reported retirees concurrently employed by more than one employer or subsequently employed by more than one employer during the same school year. In accordance with the legislative enactment, the Board separately adopted by resolution the pension surcharge amount, which is an amount equal to the sum of the combined member and state contributions (currently 12.4% of salary).

Clarifying when payment is triggered, the revised new section applies the surcharge only to a reported retiree working in a TRS-covered position. As revised, the new rule applies the same criteria used to determine eligibility for TRS membership to the determination of whether a retiree is working in a TRS-covered position for purposes of the surcharge. The revised new section also provides that an employer owes the surcharge on a retiree who is working in a TRS-covered position for a third-party entity but who is considered an employee of the employer.

The new rule is adopted on an emergency basis under §2001.034, Government Code, relating to emergency rulemaking, to enable TRS and employers affected by the new law to establish appropriate new processes, forms, publications, and programming needed to implement SB 1691 as soon as possible. Further, the new rule is adopted on an emergency basis to provide employers and retirees affected by SB 1691 necessary, appropriate, and timely guidance in the form of a

detailed rule to use in making informed budget, programming, and other decisions for the 2005 - 2006 school year.

Statutory Authority: Section 825.102, Government Code, which authorizes the Board to adopt rules for the administration of the funds of the retirement system; §2001.034, Government Code, which authorizes the adoption of rules on fewer than 30 days' notice.

Cross-reference to Statute: Section 30 of SB 1691, which establishes new §825.4092, Government Code, relating to employer contributions for employed retirees.

§31.41. Return to Work Employer Pension Surcharge.

(a) For each report month a retiree is working in a TRS-covered position and reported on the Employment of Retired Members Report, the employer that reports the retiree shall pay to the Teacher Retirement System of Texas (TRS) a surcharge based on the retiree's salary. For purposes of this section, the employer is the reporting entity that reports the employment of the retiree and the criteria used to determine if the retiree is working in a TRS-covered position are the same as the criteria for determining employment eligible for TRS membership.

(b) The surcharge amount that must be paid by the employer for each retiree working in a TRS-covered position is an amount that is derived by applying a percentage to the retiree's salary. The percentage applied to the retiree's salary is an amount set by the Board of Trustees and is based on member contribution rate and the state pension contribution rate.

(c) The surcharge is due from each employer that reports a retiree as working as described in this section on or after September 1, 2005, beginning with the report month for September 2005.

(d) The surcharge is not owed by the employer for any retiree reported by that employer on the Employment of Retired Members Report for the report month of January 2005.

(e) The surcharge is not owed by the employer for a retiree that is reported as working under the exception for Substitute Service as provided in §31.13 of the title unless that retiree combines Substitute Service under §31.13 of this title with other TRS-covered employment in the same calendar month. For each calendar month that the retiree combines substitute service and other TRS-covered employment, the surcharge is owed by the employer that reports the retiree on all compensation earned by the retiree, including compensation for the substitute service.

(f) The surcharge is owed by the employer on any retiree who is working for a third party entity but serving in a TRS-covered position and who is considered an employee of that employer under §824.601(d) of the Government Code.

(g) If a retiree is employed concurrently in more than one position that is not eligible for TRS membership, the surcharge is owed if the combined employment is eligible for membership under §25.6 of this title. If the employment is with more than one employer, the surcharge is owed by each employer.

(h) If a retiree is employed concurrently in more than one position and one of the positions is eligible for TRS membership and one is not, the surcharge is owed on the combined employment. If the employment is with more than one employer, the surcharge is owed by each employer.

(i) If a retiree is employed in a position eligible for TRS membership, the surcharge is owed by each employer on all subsequent employment with a TRS-covered employer for the same school year.

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 13, 2005.

TRD-200504045
Ronnie Jung
Executive Director
Teacher Retirement System of Texas
Effective Date: September 13, 2005
Expiration Date: January 10, 2006
For further information, please call: (512) 542-6438

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CHAPTER 41. HEALTH CARE AND INSURANCE PROGRAMS

SUBCHAPTER A. RETIREE HEALTH CARE BENEFITS (TRS-CARE)

34 TAC §41.4

The Teacher Retirement System of Texas (TRS) adopts on an emergency basis a revised version of new §41.4, concerning the administration of an employer health benefit surcharge related to employment after retirement. TRS has withdrawn the version of the emergency rule adopted by the TRS Board of Trustees ("Board") on July 8, 2005 and published in the August 12, 2005, issue of the *Texas Register* (30 TexReg 4537).

The new section is adopted on an emergency basis pursuant to §2001.034 of the Government Code, which allows TRS to adopt an emergency rule if a requirement of state or federal law requires adoption of the rule on less than 30 days notice. The revised version of the new section is proposed for permanent adoption elsewhere in this same issue of the *Texas Register*.

The Board adopts the new version of the rule on an emergency basis so TRS can implement Senate Bill 1691, 79th Legislature, Regular Session (2005) ("SB 1691"), which, with certain exceptions, requires employers who report to TRS the employment of a retiree enrolled in the retirees health benefits program ("TRS-Care") to pay a health benefit surcharge. The new law became effective September 1, 2005. In implementing SB 1691, the new rule will provide guidance regarding the basis for computing the surcharge as well as guidance on which reported retirees the surcharge must be paid. The new section also provides for payment of the surcharge on reported retirees concurrently employed by more than one employer or subsequently employed by more than one employer during the same school year. In accordance with the legislative enactment, the Board separately adopted by resolution a table setting forth the monthly dollar amounts for the surcharge, as shown in the table titled "TRS-Care Employer Surcharge Amounts--Return to Work Effective September 1, 2005," which is incorporated into this preamble and may be viewed by accessing TRS's Web site at www.trs.state.tx.us/Reporting_Officials/surcharge_amts.pdf or by requesting a copy from Ronnie Jung, TRS Executive Director, 1000 Red River Street, Austin, Texas 78701.

Clarifying when payment is triggered, the revised new section applies the surcharge only to a reported retiree enrolled in TRS-Care and working in a TRS-covered position. As revised, the

new rule applies the same criteria used to determine eligibility for TRS membership to the determination of whether a retiree is working in a TRS-covered position for purposes of the surcharge. The revised new rule also provides that it is the responsibility of the retiree to submit to the employer updated information concerning changes that occur with regard to the retiree's TRS-Care coverage. Further, the revised new section provides that an employer owes the surcharge on a retiree enrolled in TRS-Care who is working in a TRS-covered position for a third-party entity but who is considered an employee of the employer.

The new rule is adopted on an emergency basis under §2001.034, Government Code, relating to emergency rulemaking, to enable TRS and employers affected by the new law to establish appropriate new processes, forms, publications, and programming needed to implement SB 1691 as soon as possible. Further, the new rule is adopted on an emergency basis to provide employers and retirees affected by SB 1691 necessary, appropriate, and timely guidance in the form of a detailed rule to use in making informed budget, programming, and other decisions for the 2005 - 2006 school year.

Statutory Authority: Section 1575.052, Insurance Code, which authorizes the Board to adopt rules it considers necessary to implement and administer the retirees' group health benefit plan and associated fund; §2001.034, Government Code, which authorizes the adoption of rules on fewer than 30 days' notice.

Cross-reference to Statute: Section 30 of SB 1691, which establishes new §825.4092, Government Code, relating to employer contributions for employed retirees; §42 of SB 1691, which amends §1575.204, Insurance Code, relating to public school contribution under the retirees health benefits program.

§41.4. Employer Health Benefit Surcharge.

(a) When used in this section, the term "employer" has the meaning given in §821.001(7), Government Code.

(b) A retiree who is enrolled in the health benefits program ("TRS-Care") provided pursuant to the Texas Public School Retired Employees Group Benefits Act, is working in a TRS-covered position, and is reported on the Employment of Retired Members Report to the Teacher Retirement System of Texas ("TRS") shall submit the TRS-Care Employer Health Benefit Surcharge Information Form, promulgated by TRS, to the employer, providing details of the retiree's TRS-Care coverage tier, years of service credit, and category of enrollment, as well as the identification of all employers of the retiree and all employers of any other retiree enrolled under the same account identification number, as required by the form. The criteria used to determine if the retiree is working in a TRS-covered position are the same as the criteria for determining employment eligible for TRS membership.

(c) The retiree must submit to the employer an updated Employer Health Benefit Surcharge form when changes occur in coverage or the employment status of any retiree or other individual enrolled under the same account identification number.

(d) For each report month a retiree is enrolled in TRS-Care, is working in a TRS-covered position, and is reported on the Employment of Retired Members Report, the employer that reports the retire shall, using the information provided by the retiree to the employer on the Employer Health Benefit Surcharge form, pay monthly to the Retired School Employees Group Insurance Fund (the "Fund") a surcharge amount that is derived by taking the difference, if any, between:

(1) the monthly full cost, as set by the trustee, for all individuals (including a spouse and children, if any) enrolled under the same account identification number; and

(2) the monthly total premium, as set by the trustee, for all individuals (including a spouse and children, if any) enrolled under the same account identification number.

(e) The surcharge is also owed by the employer on any retiree who is enrolled in TRS-Care, is working for a third party entity but is serving in a TRS-covered position, and who is considered an employee of that employer under §824.601(d) of the Government Code.

(f) The surcharge under subsection (d) of this section is due from each employer that reports a retiree as working in a TRS-covered position on or after September 1, 2005, beginning with the report month for September 2005.

(g) The surcharge under subsection (d) of this section is not owed:

(1) by an employer for any retiree reported by that employer on the Employment of Retired Members Report for the report month of January 2005;

(2) by an employer for any retiree reported by a second employer on the Employment of Retired Members Report for the report month of January 2005, if both employers are school districts that consolidate into a consolidated school district on or before September 1, 2005; or

(3) by an employer for a retiree reported as working under the exception for Substitute Service as provided in §31.13 of this title unless that retiree combines Substitute Service under §31.13 of this title with other TRS-covered employment in the same calendar month. For each calendar month that the retiree combines substitute service and other TRS-covered employment, the surcharge is owed by the employer that reports the retiree on all compensation earned by the retiree, including compensation for the substitute service.

(h) An employer who reports to TRS the employment of a retiree who is enrolled in TRS-Care and is working in a TRS-covered position shall inform TRS as soon as possible in writing of the name, address, and telephone number of any other employer that employs the retiree or any other retiree who is also enrolled under the same account identification number.

(i) If more than one employer reports the employment of a retiree who is enrolled in TRS-Care to TRS during any part of a month, the surcharge under subsection (d) of this section required to be paid into the Fund by each reporting employer for that month is the total amount of the surcharge due that month divided by the number of reporting employers. The pro rata share owed by each employer is not based on the number of hours respectively worked each week by the retiree for each employer, nor is it based on the number of days respectively worked during the month by the retiree for each employer.

(j) If a retiree who is enrolled in TRS-Care is employed concurrently in more than one position that is not eligible for TRS membership, the surcharge is owed if the combined employment is eligible for membership under §25.6 of this title. If the employment is with more than one employer, the surcharge will be paid according to subsection (i) of this section by each employer.

(k) If a retiree who is enrolled in TRS-Care is employed concurrently in more than one position and one of the positions is eligible for TRS membership and one is not, the surcharge is owed on the combined employment. If the employment is with more than one employer, the surcharge will be paid according to subsection (i) of this section by each employer.

(l) If a retiree who is enrolled in TRS-Care is employed in a position eligible for TRS membership, the surcharge will be paid according to subsection (i) of this section by each employer on all subsequent employment with a TRS-covered employer for the same school year.

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 13, 2005.

TRD-200504043
Ronnie Jung
Executive Director
Teacher Retirement System of Texas
Effective Date: September 13, 2005
Expiration Date: January 10, 2006
For further information, please call: (512) 542-6438

PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. [~~Square brackets and strikethrough~~] indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER A. PURCHASED HEALTH SERVICES

DIVISION 19. PSYCHOLOGISTS' SERVICES

1 TAC §354.1281

The Health and Human Services Commission (HHSC) proposes to amend Chapter 354, Medicaid Health Services, §354.1281, Benefits and Limitations. Chapter 354 describes the benefits and provider requirements of the Texas medical assistance (Medicaid) program.

Background and Justification

Currently, psychological counseling and services are available only to Medicaid recipients under the age of 21. Based on legislative appropriations to HHSC, the amendment to §354.1281, Benefits and Limitations, adds mental health services provided by a licensed psychologist as a benefit available to Medicaid recipients who are 21 years of age or older.

Section-by-Section Summary

Section 354.1281 describes who may deliver psychological services and under what conditions Medicaid will reimburse for those services. The rule is amended by removing paragraph (e), which limited Medicaid coverage of psychologists' services to children under the age of 21 years who are eligible for the Early and Periodic Screening, Diagnosis, and Treatment program. The amendment also replaces the term "department" with "HHSC" to reflect changes made by House Bill 2292, 78th Legislature, R.S. (2003).

Fiscal Note

Tom Suehs, Deputy Commissioner for Financial Services, has determined that during the first five years the proposed amendment is in effect there will be a cost to the state. For state fiscal year 2006, the fiscal impact will be $1,711,602 general revenue and $4,353,006 all funds. The fiscal impact to general revenue for state fiscal years 2007 through 2010 is $2,472,824, $2,732,520, $3,010,337, and $3,319,710, respectively. The all funds fiscal impact for state fiscal years 2007 through 2010 is $6,419,585, $7,093,770, $7,814,996, and $8,618,169, respectively. The proposed amendment may positively affect the local health and human service agencies that may now bill these services to Medicaid. Local governments will not incur additional costs.

Small and Micro-Business Impact Analysis

Mr. Suehs has also determined that there will be no effect on small businesses or micro-businesses to comply with this amendment as proposed. This was determined by interpretation of the rule that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the proposed amendment. There are no anticipated economic costs to persons who are required to comply with the amendment as proposed. There is no anticipated negative impact on local employment.

Public Benefit

Mr. David Balland, Associate Commissioner for Medicaid and CHIP, has determined that for each year of the first five years the amendment is in effect, the public will benefit from adoption of the amendment. The anticipated public benefit, as a result of implementing the amendment, will be to provide additional mental health services by licensed psychologists to the adult Medicaid population.

Regulatory Analysis

HHSC has determined that the proposed amendment is not a "major environmental rule," as defined by §2001.0225 of the Texas Government Code. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. The proposed amendment is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Takings Impact Assessment

HHSC has determined that the proposed amendment does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043 of the Government Code.

Public Comment

Written comments on the proposal may be submitted to Gilbert Estrada, Policy Analyst, Medicaid/CHIP Division, Texas Health and Human Services Commission, P.O. Box 85200, MC-H600, Austin, Texas 78708-5200, within 30 days of publication of this proposal in the *Texas Register*.

Public Hearing

A public hearing is scheduled for 9:00 a.m. to 10:00 a.m. on Tuesday, October 18, 2005. The hearing will be held in Public Hearing Room, 11209 Braker Center, Building H, Austin, Texas. Persons requiring further information, special assistance, or accommodations should contact Kyna Belcher at (512) 491-1884.

To comply with federal regulations, a copy of the proposal is being sent to each Texas Department of Aging and Disability Services (DADS) office where it will be available for public review upon request.

Statutory Authority

The amendment is proposed under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; the Human Resources Code, §32.021; and the Texas Government Code, §531.021(a), which provide the Health and Human Services Commission (HHSC) with the authority to administer the Texas Medicaid program; and Government Code §2001.006, which allows state agencies to adopt rules in preparation for the implementation of legislation.

The proposed rule affects the Human Resources Code, Chapter 32, and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by the proposed amendment.

§354.1281. Benefits and Limitations.

(a) Subject to the specifications, conditions, requirements, and limitations established by the Texas Health and Human Services Commission (HHSC) or its designee, psychological counseling and services provided by a licensed psychologist are covered if the services:

(1) are within the psychologist's scope of practice, as defined by state law; and

(2) would be covered by the Texas Medical Assistance Program when they are provided by a licensed physician (MD or DO).

(b) To be payable, the services must be reasonable and psychologically necessary as determined by HHSC [~~the department~~] or its designee.

(c) The Texas Medical Assistance Program does not reimburse for the services of a psychological assistant working under the direction of a licensed psychologist.

(d) Licensed psychologists who are employed by or remunerated by a physician, hospital, facility, or other provider may not bill the Texas Medical Assistance Program directly for psychologists' services if that billing would result in duplicate payment for the same services. If the services are covered and reimbursable by the program, payment may be made to the physician, hospital, or other provider (if approved for participation in the Texas Medical Assistance Program) who employs or reimburses the licensed psychologist. The basis and amount of Medicaid reimbursement depends on the services actually provided, who provided the services, and the reimbursement methodology utilized by the Texas Medical Assistance Program as appropriate for the services and provider(s) involved.

[~~(e) Licensed psychologist services are limited to Medicaid recipients eligible for the Early and Periodic Screening, Diagnosis, and Treatment program under 25 TAC Chapter 33.~~]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 19, 2005.

TRD-200504153
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: October 30, 2005
For further information, please call: (512) 424-6900

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DIVISION 29. LICENSED PROFESSIONAL COUNSELORS, LICENSED CLINICAL SOCIAL WORKERS, AND LICENSED MARRIAGE AND FAMILY THERAPISTS

1 TAC §354.1381

The Health and Human Services Commission (HHSC) proposes to amend Chapter 354, Medicaid Health Services, §354.1381, Benefits and Limitations. Chapter 354 describes the benefits and provider requirements of the Texas medical assistance (Medicaid) program.

Background and Justification

Currently, services provided by a licensed professional counselor (LPC), licensed clinical social worker (LCSW; formerly licensed master social worker-advanced clinical practitioner or LMSW-ACP), or licensed marriage and family therapist (LMFT) are available only to Medicaid recipients under the age of 21. Based on legislative appropriations to HHSC, the amendments to §354.1381, Benefits and Limitations, add mental health services provided by an LPC, LCSW, or LMFT as a benefit available to Medicaid recipients who are age 21 years or older.

Section-by-Section Summary

Section 354.1381 describes the mental health benefits available through Medicaid when these services are provided by a LPC, LCSW, or LMFT. The rule is revised by removing paragraph (d), which limited mental health services provided by these provider types to children under the age of 21 years who are eligible for the Early and Periodic Screening, Diagnosis, and Treatment program. In addition, references to LMSW-ACP were changed to LCSW and the title was modified to list all of the provider types included in the rule. The amendment also replaces the term "department" with "Health and Human Services Commission" to reflect changes made by House Bill 2292, 78th Legislature, R.S. (2003).

Fiscal Note

Tom Suehs, Deputy Commissioner for Financial Services, has determined that during the first five years the proposed amendments are in effect there will be a cost to the state. In state fiscal year 2006, there will be a fiscal impact of $14,134,520 general revenue and $35,947,406 all funds. The fiscal impact to general revenue for state fiscal years 2007 through 2010 is $20,420,743, $22,565,329, $24,859,554, and $27,414,452, respectively. The all funds fiscal impact for state fiscal years 2007 through 2010 is $53,013,351, $58,580,813, $64,536,744, and $71,169,398, respectively. The proposed amendments may positively impact local health and human service agencies that are able to bill for these services under the proposed amendments. Local governments will not incur additional costs.

Small and Micro-business Impact

Mr. Suehs has also determined that there will be no effect on small businesses or micro-businesses to comply with these amendments as proposed. This was determined by interpretation of the rule that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the proposed amendments. There are no anticipated economic costs to persons who are required to comply with the proposal. There is no anticipated negative impact on local employment.

Public Benefit

Mr. David J. Balland, Associate Commissioner for Medicaid and CHIP, has determined that for each year of the first five years the proposal is in effect, the public will benefit from adoption of the amendments. The anticipated public benefit, as a result of enforcing the amendments, will be to provide additional mental health services to the adult Medicaid population.

Regulatory Analysis

HHSC has determined that the proposed amendments are not a "major environmental rule," as defined by §2001.0225 of the Texas Government Code. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. The proposed amendments are not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Takings Impact Statement

HHSC has determined that the proposed amendments do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under §2007.043 of the Government Code.

Public Comment

Written comments on the proposal may be submitted to Gilbert Estrada, Policy Analyst in the Medicaid/CHIP Division, Texas Health and Human Services Commission, P.O. Box 85200, MC-H600, Austin, Texas 78708-5200, within 30 days of publication of this proposal in the *Texas Register*.

Public Hearing

A public hearing is scheduled for 9:00 a.m. to 10:00 a.m. on Tuesday, October 18, 2005. The hearing will be held in Public Hearing Room, 11209 Braker Center, Building H, Austin, Texas. Persons requiring further information, special assistance, or accommodations should contact Kyna Belcher at (512) 491-1884.

To comply with federal regulations, a copy of the proposal is being sent to each Texas Department of Aging and Disability Services (DADS) office where it will be available for public review upon request.

Statutory Authority

The amendments are proposed under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; the Human Resources Code, §32.021, and the Texas Government Code, §531.021(a), which provide the Health and Human Services Commission (HHSC) with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Government Code, §2001.006, which allows state agencies to adopt rules in preparation for the implementation of legislation.

The proposed rule affects the Human Resources Code, Chapter 32, and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by the proposed rule.

§354.1381. Benefits and Limitations.

(a) Counseling for emotional disorders or conditions provided by licensed professional counselors (LPCs), licensed clinical [~~master~~] social workers (LCSWs) [~~worker-advanced clinical practitioners (LMSW-ACPs)~~], and licensed marriage and family therapists (LMFTs) as allowed by each respective licensing law are covered services.

(b) To be considered payable, the services must be reasonable and medically necessary as determined by the Health and Human Services Commission [~~department~~] or its designee.

(c) LPCs, LCSWs, [~~LMSW-ACPs~~] or LMFTs who are employed by or remunerated by another provider may not bill the Texas Medical Assistance Program directly for counseling services if that billing would result in duplicate payment for the same services.

[~~(d) Services provided by an LPC, LMSW-ACP, and LMFT are limited to Medicaid recipients eligible for the Early and Periodic Screening, Diagnosis, and Treatment program under 25 TAC Chapter 33.~~]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 19, 2005.

TRD-200504154
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: October 30, 2005
For further information, please call: (512) 424-6900

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TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 1. PRACTICE AND PROCEDURE

SUBCHAPTER H. DECISION

16 TAC §1.144

The Railroad Commission of Texas proposes amendments to §1.144, relating to Oral Argument before the Commission, to bring the Commission's practice and procedure rule concerning oral argument in line with the Railroad Commission Policy on Public Participation in Open Meetings, adopted on September 7, 2005.

The proposed amendments add detail and specificity to the current rule in order to inform and guide persons who wish to present oral argument before the Commission in open meeting. Proposed changes in subsection (a) would provide that, prior to the final disposition of any proceeding, any party may request oral

argument before the Commission. This request must be made by separate pleading or as part of a party's exceptions, replies to exceptions, brief, reply brief, motion for rehearing, or reply to a motion for rehearing. A party may not orally request the opportunity to make oral argument at a Commission open meeting.

Proposed subsection (b) provides that oral argument may be allowed at the discretion of the Commission. Failure of the Commission to grant a request for oral argument is deemed a denial of the request.

Proposed subsection (c) provides that the Commission may request that parties to any proceeding present oral argument.

Proposed subsection (d) states that if the Commission will hear oral argument, the Commission will determine the date, time, and order of the oral argument. The Commission may request that parties focus their arguments on particular issues in the case; determine the sequence in which parties will proceed, and which party, if any, may close; impose time limits on all speakers; limit or exclude unduly repetitious arguments and presentations; require that one representative present the information and position of closely aligned persons or entities; and set deadlines for filing additional information or briefs in the case.

Proposed subsection (e) would provide that, in order to ensure that persons needing special equipment or assistance are provided with the equipment or assistance, persons who have a special request concerning the presentation of comments or oral argument should contact the secretary of the Commission at least 48 hours prior to the start of the open meeting. However, failure to make such a request will not preclude a person from providing comment or oral argument. A special request includes presentation of video or audio recordings; use of audio or visual aids; and/or interpreters or other auxiliary aids, including accommodations for the disabled.

Proposed subsection (f) would provide that the Commission will accept unsolicited comments from elected officials when they are acting in their official capacities.

Lindil C. Fowler, Jr., General Counsel, Railroad Commission of Texas, has determined that for the first five years that the proposed amendments will be in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the section as amended. The Commission has long had a rule governing the request for and presentation of oral argument before the Commission in open meeting, and has long retained and exercised its discretion with respect to the time for and manner of hearing oral argument. Requesting and participating in oral argument before the Commission remains voluntary; the proposed amendments add clarity and specificity so that persons who wish to request and make oral argument will know in advance the guidelines for doing so.

Mr. Fowler has also determined that there will be no cost of compliance with the proposed amendments for individuals, small businesses, or micro-businesses. Requesting and participating in oral argument before the Commission remains voluntary, and the proposed changes would require no additional expenditures of time or money by persons electing to do so. By providing information in advance, the proposed amendments may save time and effort for some persons.

Mr. Fowler has also determined that the public benefit anticipated as a result of enforcing or administering the section as amended will be enhanced clarity and specificity in the standards for requesting and presenting oral argument before the Commission in open meeting, improved communication with the industries regulated by the Commission, and wider dissemination of information about the rules governing the Commission's practices.

Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.state.tx.us/rules/commentform.html; or by electronic mail to rulescoordinator@rrc.state.tx.us. The Commission will accept comments for 60 days after publication in the *Texas Register*. The Commission encourages all interested persons to submit comments no later than the deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Lindil C. Fowler, Jr., at (512) 463-6915, or Mary ("Polly") Ross McDonald, at (512) 463-7008. The status of Commission rulemakings in progress is available at www.rrc.state.tx.us/rules/proposed.html.

The Commission proposes the amendments under Texas Revised Civil Statutes, Article 6447, which authorizes the Commissioners to make all rules necessary for their government and proceedings; and Texas Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

Statutory authority: Texas Revised Civil Statutes, Article 6447, and Texas Government Code, §2001.004.

Cross-reference to statute: Texas Revised Civil Statutes, Article 6447, and Texas Government Code, §2001.004.

Issued in Austin, Texas on September 7, 2005.

§1.144. Oral Argument Before [~~before~~] the Commission.

(a) Prior to the final disposition of any proceeding, any [~~Any~~] party may request oral argument before the Commission by separate pleading or as part of a party's exceptions, replies to exceptions, brief, reply brief, motion for rehearing, or reply to a motion for rehearing. A party may not orally request the opportunity to make oral argument at a Commission open meeting [~~commission prior to the final disposition of any proceeding~~].

(b) Oral argument may be allowed at the discretion of the Commission. [~~commission. Any motion for oral argument may be made by separate pleading or may be included in a party's exceptions, replies, brief, or motion for rehearing.~~] Failure of the Commission [~~commission~~] to grant a request for oral argument shall be deemed denial of the request [~~motion for oral argument~~].

(c) The Commission may request that parties to any proceeding present oral argument.

(d) If the Commission will hear oral argument [~~granted~~], the Commission shall determine the date, time, and order of the oral argument. The Commission may: [~~shall be as determined by the commission.~~]

(1) request that parties focus their arguments on particular issues in the case;

(2) determine the sequence in which parties will proceed, and which party, if any, may close;

(3) impose time limits on all speakers;

(4) limit or exclude unduly repetitious arguments and presentations;

(5) require that one representative present the information and position of closely aligned persons or entities; and

(6) set deadlines for filing additional information or briefs in the case.

(e) In order to ensure that persons needing special equipment or assistance are provided with the equipment or assistance, persons who have a special request concerning the presentation of comments or oral argument should contact the secretary of the Commission at least 48 hours prior to the start of the open meeting. Failure to make such a request will not preclude a person from providing comment or oral argument. A special request includes:

(1) presentation of video or audio recordings;

(2) use of audio or visual aids; and/or

(3) interpreters or other auxiliary aids, including accommodations for the disabled.

(f) The Commission will accept unsolicited comments from elected officials when they are acting in their official capacities.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 14, 2005.

TRD-200504075
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Earliest possible date of adoption: October 30, 2005
For further information, please call: (512) 475-1295

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 129. STUDENT ATTENDANCE
SUBCHAPTER AA. COMMISSIONER'S RULES

19 TAC §129.1025

The Texas Education Agency (TEA) proposes an amendment to §129.1025, concerning student attendance accounting. The amendment would adopt by reference the *2004-2005 Student Attendance Accounting Handbook* and the *2005-2006 Student Attendance Accounting Handbook*. The handbooks provide student attendance accounting rules for school districts and charter schools. Texas Education Code (TEC), §42.004, requires the commissioner, in accordance with rules of the State Board of Education (SBOE), to take such action and require such reports as may be necessary to implement and administer the Foundation School Program (FSP). SBOE rule, 19 Texas Administrative Code §129.21, delineates responsibilities of the commissioner to provide guidelines for attendance accounting, necessary records and procedures required of school districts in preparation of a daily attendance register, and provisions for special circumstances regarding attendance accounting.

Legal counsel with the TEA has recommended that the procedures contained in each annual student attendance accounting handbook be adopted as part of the *Texas Administrative Code*. This decision was made in 2000 given a court decision challenging state agency decision-making via administrative letter/publications. Given the statewide application of the attendance accounting rules and the existence of sufficient statutory authority for the commissioner of education to adopt by reference the student attendance accounting handbook, staff proceeded with formal adoption of rules in this area. The intention is to annually update the rule to refer to the most recently published student attendance accounting handbook.

Each annual student attendance accounting handbook provides school districts and charter schools with the FSP eligibility requirements of all students, prescribes the minimum requirements of all student attendance accounting systems, lists the documentation requirements for attendance audit purposes, specifies the minimum standards for systems that are entirely functional without the use of paper, and details the responsibilities of all district personnel involved in student attendance accounting. The TEA distributes FSP resources under the procedures specified in each current student attendance accounting handbook. The final version of the student attendance accounting handbook is published on the TEA web site each June/July. A supplement, if necessary, is also published on the TEA web site.

The proposed amendment to 19 TAC §129.1025 would adopt by reference the student attendance accounting handbook for the 2004-2005 school year as well as the updated version for the 2005-2006 school year. Data from previous school years will continue to be subject to the student attendance accounting handbook as the handbook existed in those years.

Significant changes to the *2004-2005 Student Attendance Accounting Handbook* include information relating to the following: (1) provisional admittance for students not fully immunized; (2) attendance rules for prekindergarten (PK) or kindergarten children; (3) funding eligibility for high school students taking college courses; (4) general requirements for early dismissal, attendance, and class schedule waivers; (5) enrollment and withdrawal procedures for blind and visually impaired students; (6) enrollment and withdrawal procedures for students served by the Texas School for the Deaf; (7) agreements between the home district and the receiving district regarding the reporting of Public Education Information Management System (PEIMS) and attendance data for special education students; (8) PEIMS coding requirements for career and technology education courses; (9) calculating contact hours for students on paid and unpaid work-based experiences and paid employment; (10) eligibility of dual credit college and secondary career and technology education courses to be counted for career and technology contact hour funding; (11) rules for conducting home language surveys of Bilingual/English as a Second Language (ESL) students; (12) qualifications for PK students who are educationally disadvantaged, if the student qualifies for free/reduced lunch or does not understand English; (13) coding requirements for Pregnancy Related Services (PRS) support services; and (14) certification requirements for teachers who teach off-campus disciplinary alternative education programs.

Changes to the *2005-2006 Student Attendance Accounting Handbook* include: (1) adding new provisions for establishing residency; (2) changing the time for sending students records; and (3) updating language and clarifying policies for General

Education Homebound (GEH), PRS, Bilingual/ESL, PK limited English proficient (LEP) students, and career and technology contact hours, course completion, and enrollment.

Ernest Zamora, associate commissioner for support services and school finance, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended section.

Dr. Zamora has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the section will be the continued public knowledge of the existence of annual publications that specify attendance accounting procedures for school districts and charter schools. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to *rules@tea.state.tx.us* or faxed to (512) 463-0028. All requests for a public hearing on the proposed amendment submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of the proposal has been published in the *Texas Register*.

The amendment is proposed under Texas Education Code (TEC), §42.004, which authorizes the commissioner of education, in accordance with rules of the State Board of Education, to take such action and require such reports consistent with TEC, Chapter 42, as may be necessary to implement and administer the Foundation School Program.

The amendment implements the Texas Education Code, §42.004.

§129.1025. Adoption By Reference: Student Attendance Accounting Handbook.

(a) The standard procedures that school districts and charter schools shall use to maintain records and make reports on student attendance and student participation in special programs for school year 2004-2005 [~~2003-2004~~] are described in the official Texas Education Agency (TEA) publication, *2004-2005* [~~*2003-2004*~~] *Student Attendance Accounting Handbook*, which is adopted by this reference as the agency's official rule. A copy of the *2004-2005* [~~*2003-2004*~~] *Student Attendance Accounting Handbook* is available for examination during regular office hours, 8:00 a.m. to 5:00 p.m., except holidays, Saturdays, and Sundays, at the Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. In addition, the publication can be accessed from the TEA official website. The commissioner of education shall amend the *2004-2005 Student Attendance Accounting Handbook* and this subsection adopting it by reference, as needed.

(b) The standard procedures that school districts and charter schools shall use to maintain records and make reports on student attendance and student participation in special programs for school year 2005-2006 are described in the official Texas Education Agency (TEA) publication, *2005-2006 Student Attendance Accounting Handbook*, which is adopted by this reference as the agency's official rule. A copy of the *2005-2006 Student Attendance Accounting Handbook* is available for examination during regular office hours, 8:00 a.m. to 5:00 p.m., except holidays, Saturdays, and Sundays, at the Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. In addition, the publication can be accessed from the TEA official website. The commissioner of education shall amend the *2005-2006 Student Attendance Accounting Handbook* and this subsection adopting it by reference, as needed.

[~~(b) The commissioner of education shall amend the *2003-2004 Student Attendance Accounting Handbook* and this section adopting it by reference, as needed.~~]

(c) Data from previous school years will continue to be subject to the student attendance accounting handbook as the handbook existed in those years.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 16, 2005.

TRD-200504118
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Earliest possible date of adoption: October 30, 2005
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS

CHAPTER 73. LICENSES AND RENEWALS

22 TAC §73.2

The Texas Board of Chiropractic Examiners (Board) proposes an amendment to §73.2, relating to Renewal of License, to change the expired license fee as mandated by HB 972, 79th Legislature. All changes will be reflected in the fee schedule in §75.7 of this title (relating to Required Fees and Changes). Elsewhere in this issue of the *Texas Register*, the Texas Board of Chiropractic Examiners contemporaneously proposes an amendment to §75.7.

Sandra Smith, Executive Director, has determined that for the first five-year period the amendment is in effect there will be a loss of revenue of $32,800 to the state or local government as a result of enforcing or administering the amended rule. The effect on small and micro businesses: The renewal fee for each licensed chiropractor in Texas will increase by $10.00 per annum. The renewal fee for each licensed chiropractic facility in Texas will increase by $25.00 per annum. The effect on individuals: The original license fee for new chiropractic applicants seeking to practice in Texas will increase by $10.00 per annum. The original license fee for new chiropractic facilities applying to open in Texas will increase by $25.00 per facility.

Ms. Smith also determined that for each year of the first five-year period the rule is in effect the public benefit will be to provide improved enforcement and improved licensing services to the growing population of chiropractors and their patients.

Comments on the proposed rule may be submitted to Sandra Smith, Executive Director, Texas State Board of Chiropractic Examiners 333 Guadalupe St Tower III Suite 825 Austin, TX 78701, facsimile 512-305-6705, by the close of business 30 days from the date of publication in the *Texas Register*.

The amendment is proposed under Texas Occupation Code §201.152, relating to Rules, and §201.153, relating to Fees. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic. Section 201.153 authorizes the Board to set fees by rule in amounts reasonable and necessary to cover the costs of administering the Chiropractic Act.

No other statutes, articles, or codes are affected by the proposed rule.

§73.2. Renewal of License.

(a) Annual renewal. Each year, on or before the first day of a licensee's birth month, a licensee shall renew his or her license. A licensee may also apply for inactive status in accordance with §73.4 of this title (relating to Inactive Status). In order to renew a license, a licensee must submit to the board the license renewal form provided by the board, the renewal fee for an active license as provided in §75.7 of this title (relating to Fees and Charges for Public Information), any late fees, if applicable as provided in subsection (h) of this section, and verification of continuing education attendance as required by §73.3 of this title (relating to Continuing Education). An annual renewal certificate shall not be issued until all information and fees required by this section and §75.7 are provided to the board.

(b) Locum tenens information. A licensee who substitutes for another licensee (locum tenens) and temporarily practices at the facility of the absent licensee shall provide the board with a list of each facility that he or she has served as a locum tenens during the previous 12 months. The list shall include the name, address, and facility registration of each facility. A locum tenens licensee shall have proof of licensure, such as a copy of the license or the board-issued wallet size license, with them while practicing and shall show it upon request.

(c) Licensees in default of TGSLC student loan or repayment agreement.

(1) The board shall not renew a license of a licensee who is in default of a loan guaranteed by the Texas Guaranteed Student Loan Corporation (TGSLC) or a repayment agreement with the corporation except as provided in paragraphs (2) and (3) of this subsection.

(2) For a licensee in default of a loan, the board shall renew the license if:

(A) the renewal is the first renewal following notice to the board that the licensee is in default; or

(B) the licensee presents to the board a certificate issued by the corporation certifying that:

(i) the licensee has entered into a repayment agreement on the defaulted loan; or

(ii) the licensee is not in default on a loan guaranteed by the corporation.

(3) For a licensee who is in default of a repayment agreement, the board shall renew the license if the licensee presents to the board a certificate issued by the corporation certifying that:

(A) The licensee has entered into another repayment agreement on the defaulted loan; or

(B) the licensee is not in default on a loan guaranteed by the corporation or on a repayment agreement.

(4) This subsection does not prohibit the board from issuing an initial license to a person who is in default of a loan or repayment agreement but is otherwise qualified for licensure. However, the board shall not renew the license of such a licensee, if at the time of renewal, the licensee is in default of a loan or repayment agreement except as provided in paragraphs (2)(B) or (3) of this subsection.

(d) Licensees in default of other student loans or scholarship obligations.

(1) This subsection applies to a licensee in default of a student loan other than a loan guaranteed by the TGSLC, in breach of a loan repayment agreement other than one related to a TGSLC loan, or in breach of any scholarship contract.

(2) The board may refuse to renew a chiropractic license if it receives information from an administering entity that the licensee has defaulted on a student loan or has breached a student loan repayment contract, or a scholarship contract by failing to perform his or her service obligation under the contract. The board may rescind a denial of renewal under this subsection upon receipt of information from an administering entity that the licensee whose renewal was denied is now in good standing, as provided in subsection (b) of §71.3 (relating to Qualifications of Applicants).

(e) Upon notice that a licensee is again in default or breach of any loan or agreement relating to a student loan or scholarship agreement under subsections (c) or (d) of this section, the board may suspend the license or take other disciplinary action as provided in §80.2 of this title (relating to Default on Student Loans and Scholarship Agreements).

(f) Opportunity for hearing.

(1) The board shall notify a licensee, in writing, of the nonrenewal of a license under subsections (c) or (d) of this section and of the opportunity for a hearing under paragraph (2) of this subsection prior to or at the time the annual renewal application is sent.

(2) Upon written request for a hearing by a licensee, the board shall set the matter for hearing before the State Office of Administrative Hearings in accordance with §75.9(d) of this title (relating to Complaint Procedures). A licensee shall file a request for a hearing with the board within 30 days from the date of receipt of the notice provided in paragraph (1) of this subsection.

(g) A license which is not renewed under subsections (c) or (d) of this section is considered expired. Subsections (h) and (i) of this section apply to a license not renewed under subsections (c) or (d) of this section.

(h) Expired license.

(1) If an active or inactive license is not renewed on or before the first day of the licensee's birth month of each year, it expires.

(2) If a person's license has expired for 90 days or less, the person may renew the license by paying to the board the required renewal fee and a late fee, as provided in §75.7 of this title (relating to Fees)[~~, and a late fee of $162.50~~].

(3) If a person's license has expired for longer than 90 days, but less than one year, the person may renew the license by paying to the board the required renewal fee and a late fee, as provided in §75.7 of this title [~~and a late fee of $325~~].

(4) Except as provided by paragraphs (5) and (6) of this subsection, if a person's license has expired for one year or longer, the person may not renew the license but may obtain a new license by submitting to reexamination and complying with the current requirements and procedures for obtaining an initial license.

(5) At the board's discretion, a person whose license has expired for one year or longer may renew without complying with paragraph (4) of this subsection if the person moved to another state or foreign country and is currently licensed in good standing and has been in practice in the other state or foreign country for two years preceding application for renewal. The person must also pay the board a fee equal to the examination fee, as provided in §75.7 of this title. A person is considered "currently licensed" if such person is licensed by another licensing board recognized by the Board. The Board shall recognize another licensing board that:

(A) has licensing requirements substantially equivalent to the requirements of the Chiropractic Act; and

(B) maintains professional standards considered by the Board to be equivalent to the standards under the Chiropractic Act.

(6) At the board's discretion, a person whose license has expired for one year but not more than three years may renew without complying with paragraph (4) of this subsection if the board determines that the person has shown good cause for the failure to renew the license and pays to the board:

(A) the required renewal fee for each year in which the licensee was expired; and

(B) an additional fee in an amount equal to the sum of:

(i) the jurisprudence examination fee, multiplied by the number of years the license was expired, prorated for fractional years; and

(ii) two times the jurisprudence examination fee.

(7) Good cause for the purposes of paragraph (6) of this section means extenuating circumstances beyond the control of the applicant which prevented the person from complying timely with subsection (a), such as extended personal illness or injury, extended illness of the immediate family, or military duty outside the United States where communication for an extended period is impossible. Good cause is not shown if the applicant was practicing chiropractic during the period of time that the applicant's license was expired. With the renewal application, an applicant must submit a notarized sworn affidavit and supporting documents that demonstrate good cause, in the opinion of the board.

(i) Practicing with an expired license. Practicing chiropractic with an expired license constitutes practicing chiropractic without a license. A licensee whose license expires shall not practice chiropractic until the license is renewed or a new license is obtained as provided by subsection (h) of this section, except for a license which is not renewed under subsections (c) or (d) of this section if the licensee has timely requested a hearing under subsection (f) of this section.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 19, 2005.

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Sandra Smith
Executive Director
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: October 30, 2005
For further information, please call: (512) 305-6703

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22 TAC §73.3

The Texas Board of Chiropractic Examiners (Board) proposes amendments to §73.3 of this title, relating to continuing education, to clarify the use of online courses and end the use of video courses. Additional editorial changes and corrections were made, where necessary.

Sandra Smith, Executive Director, has determined that for the first five-year period the amendment is in effect there will be no additional cost to state or local governments as a result of enforcing or administering this amendment.

Ms. Smith also determined that for each year of the first five-year period the rule is in effect the public benefit will be clearer and more exact standards for chiropractic continuing education. Ms. Smith has determined that there will be no economic costs to persons who are required to comply with the amendment. There will be no effect to small or micro businesses.

Comments on the proposed amendment may be submitted to Sandra Smith, Executive Director, Texas State Board of Chiropractic Examiners 333 Guadalupe St Tower III Suite 825 Austin, TX 78701, 512-305-6705 fax, no later than 30 days from the date that the proposed amendment is published in the *Texas Register*.

The amendment is proposed under the Texas Occupations Code, §201.152, relating to rules, and §201.356, relating to continuing education. Section 201.152 authorizes the board to adopt rules necessary to regulate the practice of chiropractic. Section 201.356 authorizes the board to adopt requirements for mandatory continuing education for license holders in subjects relating to the practice of chiropractic.

No other statutes, articles, or codes are affected by the proposed rule.

§73.3. Continuing Education.

(a) Condition of Renewal. A licensee is required to attend continuing education courses as a condition of renewal of a license.

(b) Requirements.

(1) Every licensee shall attend and complete 16 hours of continuing education each year unless a licensee is exempted under subsection (d) of this section. Each licensee's reporting year shall begin on the first day of the month in which his or her birthday occurs.

(2) The 16 hours of continuing education may be completed at any course or seminar elected by the licensee, which has been approved under §73.7 of this title (relating to Approved Continuing Education Courses). However, a licensee must attend any course designated as a "TBCE Required Course," and the course may be counted as part of the 16 hour requirement. A licensee who serves as an examiner for the National Boards Part IV Examination may receive credit for this activity, not to exceed two hours each year. No more than six hours of credit may be obtained through online courses.

(3) A list of approved courses, including TBCE Required Courses, is available on the board's website, www.tbce.state.tx.us, as provided in §73.7(f). The board will also provide notice of a TBCE Course in its newsletter.

(4) Two hours of continuing education to be presented by the board may be given at the following venues/locations:

(A) Texas Chiropractic Association - Midwinter;

(B) Texas Chiropractic Association Convention;

(C) Chiropractic Society of Texas Annual Convention;

(D) Parker College of Chiropractic Homecoming;

(E) Texas Chiropractic College Homecoming;

(F) Online at www.tbce.state.tx.us;

(G) TBCE Headquarters in Austin, TX (check website for details)

(5) A licensee who is unable to travel for the purpose of attending a continuing education course or seminar due to a mental or physical illness or disability may satisfy the board's continuing education requirements by completing 16 hours of approved continuing education courses online. Video courses will no longer qualify for credit. [~~listening to audio or viewing video taped courses approved by the Board or taking approved online courses.~~]

(A) If the licensee is unable to take an online course, the licensee must submit a request for special accommodations to complete their continuing education requirements.

(B) In order for an [~~audio or video tape or an~~] online course to be accepted by the board, a licensee must submit a letter from a licensed doctor [~~chiropractic or physician,~~] who is not associated with the licensee in any manner. In the letter, the [~~chiropractor or other~~] doctor must state the nature of the illness or disability and certify that the licensee was ill or disabled, and unable to travel for the purpose of obtaining continuing education hours due to the illness or disability.

(C) A licensee is required to submit a new certificate for each year an exemption is sought. An untrue certification submitted to the board shall subject the licensee to disciplinary action as authorized by the Chiropractic Act, Occupations Code 201.501 and 201 .502.

(D) The six hour limit provided in subsection (b)(2) of this section for online courses does not apply to a licensee who submits a certification under this subsection.

(c) Verification.

(1) At the request of the Board, a licensee shall submit, to the board, written verification from each sponsor, of the licensee's attendance at and completion of each continuing education course which is used in the fulfillment of the required hours for all years requested.

(2) A licensee submitting hours as a National Boards examiner must submit written verification of the licensee's participation from the National Boards, on National Boards letterhead. The verification must include the licensee's name, board license number, and the date, time, and place of each examination attended by the licensee as an examiner.

(3) Failure to submit verification as required by paragraph (1) of this subsection shall be considered the same as failing to meet the continuing education requirements of subsection (b) of this section.

(d) Qualifying exemption. The following persons are exempt from the requirements of subsection (b) of this section:

(1) a licensee who holds an inactive Texas license. However, if at any time during the reporting year for which such exemption applies such person desires to practice chiropractic, such person shall not be entitled to practice chiropractic in Texas until all required hours of continuing education credits are obtained and the executive director has been notified of completion of such continuing education requirements;

(2) a licensee who served in the regular armed forces of the United States during part of the 12 months immediately preceding the annual license renewal date;

(3) a licensee who submits proof satisfactory to the board that the licensee suffered a mental or physical illness or disability which prevented the licensee from complying with the requirements of this section during the 12 months immediately preceding the annual license renewal date; or

(4) a licensee who is first licensed within the 12 months immediately preceding the annual renewal date.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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22 TAC §73.7

The Texas Board of Chiropractic Examiners (Board) proposes an amendment to §73.7 of this title, relating to approved continuing education courses, to require that the course title used on a sponsor's application be used to advertise a course.

Sandra Smith, Executive Director, has determined that for the first five-year period the amendment is in effect there will be no additional cost to state or local governments as a result of enforcing or administering this amendment.

Ms. Smith also has determined that for each year of the first five-year period the rule is in effect the public benefit will be clearer and more consistent advertisement for chiropractic continuing education courses. Ms. Smith has determined that there will be no new economic costs to persons who are required to comply with this amendment. There will be no effect to small or micro businesses.

Comments on the proposed rule may be submitted to Sandra Smith, Executive Director, Texas State Board of Chiropractic Examiners 333 Guadalupe St Tower III Suite 825 Austin, TX 78701, 512-305-6705 fax, no later than 30 days from the date that this proposed amendment is published in the *Texas Register*.

The amendment is proposed under Texas Occupations Code, §201.152, relating to rules, and §201.155, relating to rules restricting advertising or competitive bidding. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic. Section 201.155 authorizes the Board to adopt rules to prohibit false and misleading or deceptive advertising practices.

No other statutes, articles, or codes are affected by the proposed rule.

§73.7. Approved Continuing Education Courses.

(a) Approved sponsors. The board will approve courses sponsored only by a chiropractic college fully credited through the Council on Chiropractic Education or a statewide, national or international professional association, upon application to the board on a form prescribed by the board. Application forms are available from the board.

(b) Application. A separate application must be submitted for each course and must include the course title, subject and description, the number of credit hours, the date, time and location of the course, and the names and backgrounds of speakers or instructors, the method of instruction, the name, address and telephone number of the course coordinator, and the signature of an authorized representative of the sponsor. Each continuing education course shall be approved for one calendar year only. The number of hours of credit to be earned at a course may not be changed after an application has been submitted to the board.

(c) Application deadline and fee. A sponsor may submit an application no later than 60 days prior to the date of the course, along with a nonrefundable application fee of $25 for each course. For the purpose of this subsection, where the same course is held in multiple cities or towns, with different speakers, each location is considered a separate course. If a continuing education program consists of separate sessions or modules, on different topics and on different dates, each session or module is considered a separate course.

(d) A sponsor shall certify on the application that:

(1) all course offered by the sponsor for which board approval is requested will comply with the criteria in this section; and

(2) the sponsor will be responsible for verifying attendance at each course and will provide a certificate of attendance as set forth in subsection (i) of this section.

(e) Rejection. The board will notify, in writing, a sponsor of any rejection.

(f) Approved list of courses. The board will maintain a list of approved courses on their website at www.tbce.state.tx.us for compliance with §73.3 of this title (relating to Continuing Education).

(g) Criteria for continuing education courses. In order for the board to approve a course, the course must:

(1) be presented by one or more speakers or instructors who demonstrate, through a vitae or resume, knowledge, training and expertise in the topic to be covered;

(2) have significant educational or practical content to maintain appropriate levels of competency;

(3) be on a topic from one or more of the following categories:

(A) general or spinal anatomy;

(B) neuro-muscular-skeletal diagnosis;

(C) radiology or radiographic interpretation;

(D) pathology;

(E) public health;

(F) chiropractic adjusting techniques;

(G) chiropractic philosophy;

(H) risk management;

(I) physiology;

(J) microbiology;

(K) hygiene and sanitation;

(L) biochemistry;

(M) neurology;

(N) orthopedics;

(O) jurisprudence;

(P) nutrition;

(Q) adjunctive or supportive therapy;

(R) boundary (sexual) issues;

(S) insurance reporting procedures;

(T) chiropractic research;

(U) HIV prevention and education;

(V) acupuncture;

(W) Ethics.

(h) The board will not approve any course on practice management or accept credit for such course in satisfaction of the board's continuing education requirement for licensees.

(i) Sponsor responsibilities. A sponsor of an approved course shall:

(1) notify the board in writing prior to any change in course location, date, or cancellation;

(2) provide a roster of participants who attend the course which contains, at a minimum, each participant's name and current license number if a chiropractor, course number, and number of hours earned by each participant. This roster shall be submitted to the Board no later than 30 days after course completion ;

(3) provide each participant in a course with a certificate of attendance. The certificate shall contain the name of the sponsor, the name of the participant, the title of the course, the date and place of the course, the amount and type of credit earned, the course number and the signature of the sponsor's authorized representative;

(4) assure that no licensee receives continuing education credit for time not actually spent attending the course. If any participant's absence exceeds ten minutes during any one hour period, credit for that hour shall be forfeited and noted in the sponsor's attendance roster that is submitted to the Board. Furthermore, the sponsor is responsible for seeing that each person in attendance is in place at the start of each course period;

(5) provide the activity rosters and any other additional information about a course to the board upon request; [~~and~~]

(6) shall use the course title listed on the sponsor's application, and approved by the board, to advertise the course; and

(7) [~~(6)~~] retain for a period of three years, for each approved course, documentation of compliance with this section, including:

(A) the curriculum presented;

(B) the names and vitae for each speaker;

(C) the attendance roles; and

(D) credit hours earned.

(j) The board may evaluate an approved sponsor or course at any time to ensure compliance with the requirement of this section. Upon the failure of a sponsor or course to comply with the requirements of this section, the board, at its discretion, may revoke the sponsor or the course's approved status.

(k) The board, at its discretion, may authorize the presentation of a board required course at the annual seminars listed in §73.3 of this title (relating to Continuing Education). The board will approve the subject, content and presenter of the course. Such course generally will

cover topics of timely and educational interest to the chiropractic profession. The sponsor of a seminar shall designate the course as board required on its seminar agenda and other materials as follows: "TBCE Required Course." This designation may only be used for a course for which the sponsor has received written notice from the executive director that the board has approved the course for such designation.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Sandra Smith
Executive Director
Texas Board of Chiropractic Examiners
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CHAPTER 75. RULES OF PRACTICE

22 TAC §75.7

The Texas Board of Chiropractic Examiners (Board) proposes an amendment to §75.7, relating to Required Fees and Charges, to change license late fee penalties as mandated by HB 972, 79th Legislature. All changes will be reflected in the fee schedule. Elsewhere in this issue of the *Texas Register*, the Texas Board of Chiropractic Examiners contemporaneously proposes an amendment to §73.2, concerning Renewal of License.

Sandra Smith, Executive Director, has determined that for the first five-year period the amendment is in effect there will be a loss of revenue of $164,000 to state or local government as a result of enforcing or administering the amended rule. In addition, during the first five-year period the amendment is enforced, other proposed amendments to §73.2, concerning renewals of licenses, will increase revenue to state or local government by $505,630.00, as mandated by the 79th Legislature in the General Appropriations Act.

The effect on small and micro businesses: The renewal fee for each licensed chiropractor in Texas will increase by $10.00 per annum. The renewal fee for each licensed chiropractic facility in Texas will increase by $25.00 per annum. The effect on individuals: The original license fee for new chiropractic applicants seeking to practice in Texas will increase by $10.00. The original license fee for new chiropractic facilities applying to open in Texas will increase by $25.00 per facility.

Ms. Smith also determined that for each year of the first five-year period the rule is in effect the public benefit will be to provide improved enforcement and improved licensing services to the growing population of chiropractors and their patients.

Comments on the proposed rule may be submitted to Sandra Smith, Executive Director, Texas State Board of Chiropractic Examiners 333 Guadalupe St Tower III Suite 825 Austin, TX 78701, facsimile (512) 305-6705, by the close of business 30 days from the date of publication in the *Texas Register*.

The amendment is proposed under Texas Occupation Code §201.152, relating to Rules, and §201.153, relating to Fees. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic. Section 201.153 authorizes the Board to set fees by rule in amounts reasonable and necessary to cover the costs of administering the Chiropractic Act.

No other statutes, articles, or codes are affected by the proposed rule.

§75.7. Required Fees and Charges.

(a) Current fees required by the board are as follows:
Figure: 22 TAC §75.7(a)

(b) The board is required to increase its fees for annual renewal, an examination, and re-examination by $200 pursuant to the Occupations Code §201.153(b). That increase is reflected in subsection (a) of this section under the column entitled "153(b) FEE". The total amount of each of these fees must be paid before the board will process an application subject to such fee.

(c) Any remittance submitted to the board in payment of a required fee for application, initial license, registration, or renewal, must be in the form of a cashier's or certified check for guaranteed funds or money order, made out to the "Texas Board of Chiropractic Examiners." Checks from foreign financial institutions are not acceptable.

(d) Fees for license verification or certification, license replacement, and continuing education applications may submit the required fee in the form of a personal or company check, cashier's or certified check for guaranteed funds or money order, made out to the "Texas Board of Chiropractic Examiners." Checks from foreign financial institutions are not acceptable. Persons who have submitted a check which has been returned, and who have not made good on that check and paid the returned check fee provided in subsection (a) of this section, within 10 days from notice from the board of the returned check, for whatever reason, shall submit all future fees in the form of a cashier's or certified check or money order.

(e) Copies of public information, not excepted from disclosure by the Texas Open Records Act, Chapter 552, Government Code, including the information listed in paragraphs (1) - (6) of this subsection may be obtained upon written request to the board, at the rates established by the General Services Commission for copies of public information, 1 TAC §§111.61 - 111.70 (relating to Copies of Public Information).

(1) List of New Licensees

(2) Lists of Licensees

(3) Licensee Labels

(4) Demographic Profile

(5) Facilities List

(6) Facilities Labels

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Executive Director
Texas Board of Chiropractic Examiners
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22 TAC §75.9

The Texas Board of Chiropractic Examiners (Board) proposes amendments to §75.9, relating to complaint procedures, as required by HB 972, the Board's Sunset legislation, and as necessary to clarify the rules and for temporary suspensions.

Section 11 of HB 972, 79th Legislature, Regular Session, amended the Chiropractic Act, Texas Occupations Code §201.205(a), to require that the Board prioritize complaints for purpose of determining the order in which they are investigated, taking into account the seriousness of the allegations, and the length of time that a complaint has been pending. The Board's Enforcement Committee has prioritized its review of pending complaints for some time. This rule change will not alter the Board's practice in the exercise of its enforcement discretion. The Board will, however, publish its schedule of enforcement priorities on its web site (www.tbce.state.tx.us).

The Board's complaint form has also been revised to include a space for identifying any person that assists in filling out the form.

The Board's rules regarding temporary suspensions under §75.9(g) are revised to clarify the standards and procedures. The rule confirms that, at least, a preponderance of the evidence must support a temporary suspension.

Sandra Smith, Executive Director, has determined that for the first five-year period the amendment is in effect there will be no additional cost to state or local governments as a result of enforcing or administering the amendment.

Ms. Smith has also determined that for each year of the first five-year period the rule is in effect the public benefit will be a greater clarity of the Board's procedures. Ms. Smith has determined that here will be no economic costs to persons who are required to comply with the amendment. There will be no effect to small or micro businesses.

Comments on the proposed rule may be submitted to Sandra Smith, Executive Director, Texas State Board of Chiropractic Examiners 333 Guadalupe St Tower III Suite 825 Austin, TX 78701, (512) 305-6705 fax, no later than 30 days from the date that the proposed rule is published in the *Texas Register*.

The amendment is proposed under the Texas Occupations Code, §201.152, relating to rules, and §201.507, relating to temporary license suspension. Section 201.507 authorizes the Board's Enforcement Committee to temporarily suspend a license when the continued practice of chiropractic by a licensed holder constitutes a continuing or imminent threat to the public welfare.

No other statutes, articles, or codes are affected by the proposed rule.

§75.9. Complaint Procedures.

(a) Filing complaints. A person who has a complaint about a licensee, facility or CRT may file a complaint with the board in person at the board's office, or in any written form, including submission of a completed complaint form. The board adopts the following form in both English and Spanish as its official complaint form which shall be available from the board upon request. A complaint shall contain information necessary for the proper processing of the complaint by the board, including:

Figure: 22 TAC §75.9(a)

(1) complainant's name, address and phone number;

(2) name, address and phone number of the chiropractor, chiropractic facility, CRT or other person, firm or corporation, if known, against whom the complaint is made;

(3) date, time and place of occurrence of alleged violation; and

(4) complete description of incident giving rise to the complaint.

(b) Categories of complaints and investigation.

(1) The board shall distinguish between categories of complaints as follows:

(A) consumer and patient complaints against chiropractors, CRTs, or chiropractic facilities regarding alleged violations of state law, including the Texas Chiropractic Act, or board rules or orders;

(B) alleged unauthorized practice of chiropractic by unlicensed individuals, unregistered facilities or CRTs, or by a licensee, facility or CRT while a suspension order or restrictive sanction by the board is in effect;

(C) licensure, registration or reinstatement applications;

(D) alleged advertising violations by chiropractors or chiropractic facilities.

(2) The board shall prioritize complaints for purposes determining the order in which complaints are investigated, taking into account the seriousness of the allegations made in a complaint and the length of time a complaint has been pending.

(A) The board shall create and maintain a written list of the categories of complaints in order from the most serious to least serious violations of the Texas Chiropractic Act or administrative rules. The list shall also cite the specific rules and statutes that may have been violated, and the fines or other penalties that may be assessed.

(B) The board shall have this list available at the board office and on the board website for interested parties.

(C) The board shall use this list to set priorities for the investigation of complaints against licensees with the most serious complaints being of the highest priority.

(3) [~~(2)~~] All complaints or reports of alleged violations will be investigated by the board. However, anonymous complaints may not be investigated if insufficient information is provided or the allegations are vague, appear to lack a credible or factual foundation, or cannot be proved for lack of a witness or other evidence. The executive director of the board will determine whether or not an anonymous report will be logged in as a complaint for investigation. A complaint shall not be dismissed without appropriate consideration. The board and a complainant shall be advised of a dismissal of a complaint.

(4) [~~(3)~~] The board staff may initiate an investigation, including the filing of a complaint, on an individual or facility regulated by the board for compliance with the law or board rules or order.

(c) Enforcement Committee.

(1) The President shall appoint an Enforcement Committee to consider all complaints filed with the board. The Executive Director under the direction of the Enforcement Committee chair shall supervise all investigations.

(2) The Enforcement Committee shall have the power to issue subpoenas and subpoenas duces tecum to compel the attendance of witnesses and the production of books, records, and documents, to

issue commissions to take depositions, to administer oaths and to take testimony concerning all matters within the assigned jurisdiction.

(3) The Enforcement Committee shall determine the disposition of a complaint as provided in this subsection and §75.10 and §75.11 of this title (relating to Disciplinary Guidelines and Sanctions, respectively). The Enforcement Committee may delegate the authority to close certain complaints to the Executive Director.

(4) The Enforcement Committee may schedule an informal conference in a case in order to hear from the complainant and the respondent, in person, or if it believes a conference may facilitate the resolution of the case. A respondent, although not required, is urged to attend the informal conference. A complainant will be given notice of the conference and invited to attend. A complainant is not required to attend an informal conference.

(5) Informal conferences shall not be deemed to be meetings of the board.

(6) In a case where the Enforcement Committee has made a finding of a violation for which a sanction should be imposed, the committee may direct staff to offer an agreed order to the respondent in an effort to resolve the case informally. If an agreed order is not accepted by the respondent or no agreed order is offered, the case will be referred to the SOAH for formal hearing. The Enforcement Committee shall present an agreed order to the board for its approval once it has been signed by the respondent. Should the board amend the proposed order, the executive director shall contact the respondent to seek concurrence. If the respondent does not concur, the Enforcement Committee shall determine whether negotiations on an agreed order should continue or to refer the case for formal hearing.

(d) Commencement of formal hearing proceedings. Board staff shall commence formal hearing proceedings by filing the case with the SOAH and by giving notice to the respondent as provided §76.3 of this title (relating to Commencement of Enforcement Proceedings).

(e) Recission of probation.

(1) The board may at any time while an individual or facility is on probation upon majority vote rescind the probation and enforce the board's original action suspending such license or registration for violation of the terms of the probation or for other good cause as the board in its discretion may determine. Violations of probation shall be referred to the Enforcement Committee for action under this section. Probation shall not be rescinded without notice and an opportunity for a hearing on whether or not the probation has been violated.

(2) The board shall maintain a chronological and alphabetical listing of licensees, facilities, and CRTs, who have had their license or registration, suspended or revoked, and shall monitor compliance with each order. Any noncompliance observed as a result of monitoring shall be referred to the Enforcement Committee for action under this section.

(f) Reinstatement. An individual or chiropractic facility whose license or registration has been revoked for a period of more than one year may, after the expiration of at least one year from the date that such revocation became final, apply to the board, on forms provided by the board, for reinstatement. In considering the reinstatement of a revoked license or registration, the board in its discretion may:

(1) deny reinstatement; or

(2) grant reinstatement:

(A) without condition;

(B) with probation for a specified period of time under specified conditions; or

(C) with or without reexamination or additional training.

(g) Temporary suspension upon threat to public. The Enforcement Committee or the board, with a two-thirds vote, may temporarily suspend a license to practice chiropractic in the State of Texas if the committee or the board determines from the preponderance of the evidence or information presented to it that continued practice by the licensee constitutes a continuing or imminent threat to the public welfare. The purpose of a temporary suspension is to protect the public until a preliminary hearing can be held.

(1) Such suspension may occur without notice or hearing if at the time the suspension is ordered, a hearing on whether a disciplinary proceeding should be initiated is scheduled not later than the 14th day after the date of suspension.

(A) The purpose of the 14-day hearing is to provide the licensee with notice and an opportunity to review the Board's evidence or information, to present evidence, raise defenses, and to be heard.

(B) At the 14-day hearing, the only issue presented is whether the temporary suspension should be dissolved or kept in place. If the administrative law judge finds that the Board has competent evidence or information that continued practice by the licensee constitutes a continuing or imminent threat to the public welfare, then the administrative law judge may issue an order keeping the temporary suspension in place until a final hearing can be held on the merits of the case.

(2) When practicable and at its discretion, the Enforcement Committee may provide a licensee with notice and an opportunity for an informal conference prior to issuing a temporary suspension.

(3) A second hearing on the suspended license shall be held not later than the 60th day after the date the suspension was ordered. This 60-day hearing shall be a hearing on the merits of the board's complaint. If the 60-day [~~second~~] hearing is not held in the time required, the license is reinstated without further action of the board or committee.

(4) A hearing held under this subsection [~~paragraph~~] shall be conducted by the SOAH.

(5) [~~(2)~~] The licensee will be notified of a suspension and any hearing scheduled under this subsection by certified mail.

(6) [~~(3)~~] The suspension shall remain in effect pending a final decision of the board unless an administrative law judge, the committee, or the board orders the suspension rescinded after hearing.

(7) [~~(4)~~] The licensee shall not practice chiropractic during the duration of the suspension.

(8) [~~(5)~~] During the suspension the enforcement and investigatory processes will continue.

(9) The licensee may waive either the 14-day or 60-day hearing or may agree that such hearings can be held beyond the statutory deadlines. The temporary suspension shall remain in effect until a hearing is held or is otherwise dissolved.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 19, 2005.

TRD-200504148
Sandra Smith
Executive Director
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: October 30, 2005
For further information, please call: (512) 305-6703

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CHAPTER 79. LICENSURE OF CERTAIN OUT-OF-STATE APPLICANTS

22 TAC §79.1

The Texas Board of Chiropractic Examiners (Board) proposes an amendment to §79.1, relating to general requirements for licensure of certain out-of-state applicants, as required by HB 972, the Board's Sunset legislation.

Sandra Smith, Executive Director, has determined that for the first five-year period the amendment is in effect there will be no additional cost to state or local governments as a result of enforcing or administering the amendment.

Ms. Smith also determined the for each year of the first five-year period the amendment is in effect the public benefit will be clearer standards for out-of-state applicants. Ms. Smith has determined that here will be no economic costs to persons who are required to comply with the amendment. There will be no effect to small or micro businesses.

Comments on the proposed rule may be submitted to Sandra Smith, Executive Director, Texas State Board of Chiropractic Examiners 333 Guadalupe St Tower III Suite 825 Austin, TX 78701, (512) 305-6705 fax, no later than 30 days from the date that the proposed rule is published in the *Texas Register*.

The amendment is proposed under the Texas Occupations Code, §201.152, relating to rules, and §201.309 relating to license issuance to certain out-of-state applicants. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic. Section 201.309 authorizes the board to issue a license to certain out-of-state applicants under certain circumstances.

No other statutes, articles, or codes are affected by the proposed rule.

§79.1. General Requirements for Licensure of Certain Out-of-State Applicants.

(a) An individual who is licensed in another state or foreign country shall be issued a license under the following circumstances:

(1) The applicant must be licensed in good standing as a doctor of chiropractic in another state, the District of Columbia, a territory of the United States, or a foreign country, that has licensing requirements that are substantially equivalent to the requirements of the Texas Chiropractic Act, and must furnish proof of such licensure on board forms provided. For the purposes of this chapter, the term "substantially equivalent" means that the jurisdiction from which the doctor is requesting licensure has, or had at the time of licensure, equivalent practices and requirements in the following areas:

(A) scope of practice;

(B) continuing education;

(C) license renewal;

(D) enforcement practices;

(E) examination requirements;

(F) undergraduate education requirements;

(G) chiropractic education requirements.

(2) The applicant must have passed the National Board of Chiropractic Examiners Examination Parts I, II, III, IV and Physiotherapy, or the National Board of Chiropractic Examiners SPEC Examination with a grade of 375 or better and must request a true and correct copy of the applicant's score report be sent directly to the Texas Board of Chiropractic Examiners.

(3) The applicant must not have failed a licensure exam conducted by the Board within the 10 years immediately preceding the date of application for a license.

(4) The applicant must not have been the subject of a disciplinary action in any jurisdiction in which the applicant is, or has been, licensed and the applicant must not be the subject of a pending investigation in any jurisdiction in which the applicant is, or has been, licensed.

(5) The applicant must sit for and pass the Texas jurisprudence examination with a grade of 75% or better.

(6) For the three years immediately preceding the date of the application, the applicant must have:

(A) practiced chiropractic; or

(B) practiced as a chiropractic educator at a chiropractic school accredited by the Council on Chiropractic Education.

(b) Application and fee. The candidate for licensure will be subject to all application requirements required by §71.2 of this title (relating to Application for Licensure) and subject to the applicable fees established under §75.7 of this title (relating to Required Fees).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 19, 2005.

TRD-200504149
Sandra Smith
Executive Director
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: October 30, 2005
For further information, please call: (512) 305-6703

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PART 8. TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

CHAPTER 153. RULES RELATING TO PROVISIONS OF THE TEXAS APPRAISER LICENSING AND CERTIFICATION ACT

22 TAC §§153.1, 153.5, 153.9, 153.11, 153.13, 153.15, 153.18, 153.20, 153.21, 153.25, 153.27

The Texas Appraiser Licensing and Certification Board proposes amendments to §§153.1, 153.5, 153.9, 153.11, 153.13, 153.15, 153.18, 153. 20, 153.21, 153.25, and 153.27.

Section 153.1 amends the definition of a sponsor and adds a new definition for an authorized supervisor. Section 153.5 standardizes the application fee for certified or licensed applicants applying through reciprocity and changes the fee charged for a licensure history from $10 to $25. Section 153.9 eliminates language for a process not used requiring the Commissioner to review the application and make a recommendation on final action to the Board. Also, effective March 1, 2006, the term of an application for certification or licensure is limited to one year from the date the original application was submitted. Section 153.11 removes outdated text regarding the administration of examinations since the examination is provided by a contracted testing service. Section 153.13 incorporate the new educational requirements for certification and licensure so that they are consistent with the Appraiser Qualifications Board (AQB) Criteria. Establishes the minimum educational requirements that are consistent with the recommendations of the AQB Criteria for appraiser trainee applications received after February 28, 2006. Removes an outdated reference regarding an accreditation required for the acceptance of distance education courses. Clarifies when a current Board member or staff is able or eligible to teach or guest lecture in an TALCB approved qualifying or continuing education course that reflects a Texas Ethics Commission opinion. Section 153.15 changes the time frame to be no less than 12 months in which a state licensed appraiser can complete the 2,000 hours of appraisal experience for licensing as set forth in the AQB Criteria. Section 153.18 establishes new continuing education requirements for appraiser trainee applications received after February 28, 2006, as set forth by the recommended guidelines of AQB Criteria. Section 153.20 defines the statute of limitations regarding the time limit to be applied when litigation takes place. Section 153.21 defines the requirements that an applicant for appraiser trainee must satisfy, who is eligible to sponsor an appraiser trainee, and the relationship and responsibility of the sponsor or authorized supervisor with the appraiser trainee. Section 153.25 increases the term on a temporary practice registration from 60 days to six months in compliance with the Appraisal Subcommittee requirement. Section 153.27 sets the application fees for a non-resident applicant applying for certification or licensure to be equal to the fees paid by a Texas resident to become certified or licensed.

Wayne Thorburn, Commissioner, Texas Appraiser Licensing and Certification Board, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Mr. Thorburn also has determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of these amendments will improve the application process for applicants applying for a temporary non-resident registration or applying through reciprocity. Establishing criteria that is consistent with the Appraiser Qualifications Board for certification and licensure to ensure compliance with Federal mandates. There will be no effect on small businesses. The only cost to individuals required to comply with the proposed amendments is the fee increase for a license histories reflected in Section 153.5 Fees (a)(7).

Comments on the proposed amendments may be submitted to Wayne Thorburn, Commissioner, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188.

The amendments are proposed under the Texas Appraiser Licensing and Certification Act, Subchapter D, Board Powers and Duties (Occupations Code, Chapter 1103), which provides the board with authority to adopt rules under Sec.1103.151 Rules Relating to Certification and Licenses.

No other code, article, or statute is affected by this proposal.

§153.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) - (9) (No change.)

(10) Authorized supervisor--A certified appraiser who is designated by the trainee's sponsor to supervise specific appraisal work performed by that trainee and which the requirements for experience for licensing and certification. An authorized supervisor assumes the same responsibilities regarding the work product of a trainee as a sponsor.

(11) [~~(10)~~] Board--The Texas Appraiser Licensing and Certification Board.

(12) [~~(11)~~] Classroom hour--Fifty minutes of actual classroom session time.

(13) [~~(12)~~] Client--Any party for whom an appraiser performs a service.

(14) [~~(13)~~] College--Junior or community college, senior college, university, or any other postsecondary educational institution established by the Texas Legislature, which is accredited by the Commission on Colleges of the Southern Association of Colleges and Schools or like commissions of other regional accrediting associations, or is a candidate for such accreditation.

(15) [~~(14)~~] Commissioner--The commissioner of the Texas Appraiser Licensing and Certification Board.

(16) [~~(15)~~] Complaining witness--Any person who has made a written complaint to the board against any person subject to the jurisdiction of the board.

(17) [~~(16)~~] Complete appraisal--An appraisal performed without invoking the departure rule.

(18) [~~(17)~~] Contested case--A proceeding in which the legal rights, duties or privileges of a party are to be determined by the board after an opportunity for adjudicative hearing.

(19) [~~(18)~~] Council--The Federal Financial Institutions Examination Council (FFIEC) or its successor.

(20) [~~(19)~~] Day--A calendar day unless clearly indicated otherwise.

(21) [~~(20)~~] Departure rule--A limited departure from a requirement of the Uniform Standards of Professional Appraisal Practice, as defined by the USPAP.

(22) [~~(21)~~] Distance education--Any educational process based on the geographical separation of learner and instructor (e.g., CD-ROM, online learning, correspondence courses, video conferencing, etc.), that provides interaction between the learner and instructor and includes testing.

(23) [~~(22)~~] Evaluation--An estimate of value that is not more than a limited appraisal, may be presented in a format that is less

than a self-contained report, is prepared by a certified or licensed real estate appraiser or other lawfully authorized real estate professional, and includes an estimate of a property's market value, a certification and limiting conditions, and an analysis or the supporting information used in forming the estimate of value.

(24) [~~(23)~~] Feasibility analysis--A study of the cost-benefit relationship of an economic endeavor.

(25) [~~(24)~~] Federal financial institution regulatory agency--The Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the National Credit Union Administration, or the successors of any of those agencies.

(26) [~~(25)~~] Federally related transaction--Any real estate-related transaction engaged in, contracted for, or regulated by a federal financial institution regulatory agency, that requires the services of an appraiser.

(27) [~~(26)~~] Foundation--The Appraisal Foundation (TAF) or its successor.

(28) [~~(27)~~] Fundamental real estate appraisal course--Basic real estate appraisal courses which include the following topics, but are not limited to, principles of real estate appraisal, real estate appraisal practice, real estate appraisal procedures, highest and best use, report writing, rural appraisal, appraisal review, residential appraisal/valuation, agricultural property appraisal, sales comparison approach, cost approach, income capitalization, discounted cash flow analysis, real estate appraisal case studies, commercial appraisal, non-residential real estate appraisal, and other courses specifically determined by the board.

(29) [~~(28)~~] Inactive certificate or license--A general certification, residential certification, or state license which has been placed on inactive status by the board.

(30) [~~(29)~~] License--The whole or a part of any board permit, certificate, approval, registration or similar form of permission required by law.

(31) [~~(30)~~] Licensee--A person certified, licensed, approved, authorized or registered by the board under the Texas Appraiser Licensing and Certification Act.

(32) [~~(31)~~] Licensing--Includes the board processes respecting the granting, disapproval, denial, renewal, certification, revocation, suspension, annulment, withdrawal or amendment of a license.

(33) [~~(32)~~] Limited appraisal--An appraisal in which the departure rule is invoked.

(34) [~~(33)~~] Market analysis--A study of market conditions for a specific type of property.

(35) [~~(34)~~] Non-residential real estate appraisal course--A course with emphasis on the appraisal of non-residential real estate properties which include, but are not limited to, income capitalization, income property, commercial appraisal, rural appraisal, agricultural property appraisal, discounted cash flow analysis, subdivision analysis and valuation, or other courses specifically determined by the board.

(36) [~~(35)~~] Nonresidential property--A property which does not conform to the definition of residential property.

(37) [~~(36)~~] Party--The board and each person or other entity named or admitted as a party.

(38) [~~(37)~~] Person--An individual.

(39) [~~(38)~~] Personal property--Identifiable tangible objects and chattels that are considered by the general public as being "personal," for example, furnishings, artwork, antiques, gems and jewelry collectibles, machinery and equipment; all tangible property that is not classified as real estate.

(40) [~~(39)~~] Petitioner--The person or other entity seeking an advisory ruling, the person petitioning for the adoption of a rule, or the party seeking affirmative relief in a proceeding before the board.

(41) [~~(40)~~] Provisional License--A license issued under the Texas Appraiser Licensing and Certification Act, §1103.208, and §153.16 of this title (relating to Provisional License), to individuals who have met the educational and examination requirements for licensing but who have not met the experience requirements.

(42) [~~(41)~~] Real estate--An identified parcel or tract of land, including improvements, if any.

(43) [~~(42)~~] Real estate-related financial transaction--Any transaction involving: the sale, lease, purchase, investment in, or exchange of real property, including an interest in property or the financing of property; the financing of real property or an interest in real property; or the use of real property or an interest in real property as security for a loan or investment including a mortgage-backed security.

(44) [~~(43)~~] Real property--The interests, benefits, and rights inherent in the ownership of real estate.

(45) [~~(44)~~] Record--All notices, pleadings, motions and intermediate orders; questions and offers of proof; objections and rulings on them; any decision, opinion or report by the board; and all staff memoranda submitted to or considered by the board.

(46) [~~(45)~~] Report--Any communication, written or oral, of an appraisal, review, or analysis; the document that is transmitted to the client upon completion of an assignment.

(47) [~~(46)~~] Residential property--Property that consists of at least one but not more than four residential units.

(48) [~~(47)~~] Respondent--Any person or other entity subject to the jurisdiction of the board against whom any complaint has been made.

(49) [~~(48)~~] Restricted use appraisal report--A written report as defined by and prepared under the USPAP.

(50) [~~(49)~~] Review--The act or process of critically studying a report prepared by another.

(51) [~~(50)~~] Self-contained appraisal report--A written report as defined by and prepared under the USPAP.

(52) Sponsor--A certified appraiser who is designated as the supervising appraiser for an appraiser trainee. The sponsor is responsible for providing active, personal and diligent supervision and direction of the appraiser trainee.

(53) [~~(51)~~] State certified real estate appraiser--A person certified under the Texas Appraiser Licensing and Certification Act.

(54) [~~(52)~~] State licensed real estate appraiser--A person licensed under the Texas Appraiser Licensing and Certification Act.

(55) [~~(53)~~] Summary appraisal report--A written report as defined by and prepared under the USPAP.

(56) [~~(54)~~] Workfile--documentation necessary to support an appraiser's analysis, opinions, and conclusions, and in compliance with the Records Keeping section of the Ethics Rule of USPAP.

§153.5. Fees.

(a) The board shall charge and the commissioner shall collect the following fees:

(1) - (5) (No change.)

(6) an application fee by reciprocity set at the amount of the fee charged for a similar license or certificate issued to a Texas resident[~~in the appraiser's state of present licensure or certification~~];

(7) a fee for providing each licensure history of $25[~~$10~~];

(8) - (20) (No change.)

(b) - (c) (No change.)

§153.9. Applications.

(a) A person desiring to be certified or licensed as an appraiser or approved as an appraiser trainee or registered as a temporary nonresident appraiser shall file an application using forms prescribed by the board. [~~The commissioner shall review the application and make a recommendation for final action to the board.~~] The board may decline to accept for filing an application which is materially incomplete or which is not accompanied by the appropriate fee. Except as provided by the Act, the board may not grant a certification, license or approval of trainee status to an applicant unless the applicant:

(1) - (5) (No change.)

(b) - (f) (No change.)

(g) An application shall be considered void and subject to no further evaluation or processing if the applicant fails to provide acceptable documentation that all requirements or licensure, certification, or approval as an appraiser trainee have been met within one year of the date the application was received by the board [~~, or within one year of the date of the applicant's last examination, whichever occurs later~~].

(h) (No change.)

§153.11. Examinations.

(a) - (b) (No change.)

(c) If an applicant fails the examination, the applicant must apply to take the examination again and pay the appropriate fee within one year from the date of the original application[~~unsuccessful examination~~]. If the applicant has not satisfied all examination requirements within one year from the time the board accepted an application for filing [~~or timely applied to take the examination again~~], the application is terminated and a new application is required.

(d) Examinations shall be administered at locations designated by the board. Applicants may be assigned to an examination date and site. [~~The assigned site must be the nearest examination site available to the applicant.~~] An applicant who is registered for an examination and fails to attend shall forfeit the examination fee.

(e) - (f) (No change.)

[~~(g) Examination schedules shall be published periodically by the board.~~]

(g) [~~(h)~~] Special examinations based on verified physical limitations or other good cause as determined by the board may be arranged for individual applicants. Requests for special examinations will be handled individually and may require medical verification or confirmation.

(h) [~~(i)~~] Examinees shall comply with all instructions from the board, an examination proctor, or the testing service under contract with the board. Proctors may confiscate examination materials of an examinee giving or receiving or attempting to give or receive unauthorized assistance or answers to examination questions and such examinee will be dismissed from the examination session with a failing grade. Dismissal may result in disapproval of an application. The board, or the testing service under contract with the board, may file theft charges against any person who removes or attempts to remove an examination or any portion thereof or any written material furnished with the examination whether by actual physical removal or by transcription. The board may deny, suspend, or revoke a license or certification for disclosing to another person the content of any portion of an examination with the expectation that the disclosed information would be used by or made available to another applicant.

[~~(j) The Board shall periodically publish guidelines and pre-examination study guides. The periodicals and guidelines shall be updated as necessary and shall be made available to applicants. Except for the examinations and other testing products that require secure and discreet protection, the contents of the study guides and other material developed by the board or with the board's authorization is within the public domain and fee of copyright restrictions. If the material is reproduced for distribution by an entity other than the board, the material may not be sold at a price above the cost of duplication and distribution. The entity may not profit from the distribution of the material.~~]

(i) [~~(k)~~] Examination by endorsement: An applicant for a state license or certification who has successfully passed an AQB approved competency examination, and is currently licensed or certified in another jurisdiction and in good standing, will not be required to retake the examination for the same level of licensure or certification to become certified or licensed in Texas. The applicant shall provide appropriate documentation as required.

§153.13. Educational Requirements.

(a) General Real Estate Appraiser Certification.

(1) Applicants for General Real Estate Appraiser Certification whose application is received by the board prior to November 1, 2007 must have successfully completed 180 classroom hours in courses approved by the board which meet the requirements as set out in subsections (e) - (o)[~~(d)-(n)~~] of this section.

[~~(2)~~] Of these 180 classroom hours, at least 90 classroom hours must be in fundamental real estate appraisal courses specifically approved by the board, and at least 15 classroom hours must be in a class devoted to the Uniform Standards of Professional Appraisal Practice completed within two years prior to submission of the application. At least 30 classroom hours of the fundamental real estate appraisal course requirements must be in courses with emphasis on the appraisal of non-residential properties.

(2) Applicants for General Real Estate Appraiser Certification whose application is received by the board after October 31, 2007 shall meet all educational requirements set forth by the Appraiser Qualifications Board.

(b) Residential Real Estate Appraiser Certification.

(1) Applicants for Residential Real Estate Appraiser Certification whose application is received by the board prior to November 1, 2007 must have successfully completed 120 classroom hours in courses approved by the board which meet the requirements as set out on subsections (e) - (o)[~~(d)-(n)~~] of this section.

[~~(2)~~] Of these 120 classroom hours, at least 60 classroom hours must be in fundamental real estate appraisal courses specifically approved by the board, and at least 15 classroom hours must be in a class devoted to the Uniform Standards of Professional Appraisal Practice completed within two years prior to submission of the application.

(2) Applicants for Residential Real Estate Appraiser Certification whose application is received by the board after October 31,

2007 shall meet all educational requirements set forth by the Appraiser Qualifications Board.

(c) Real Estate Appraiser License or Provisional License.

(1) Applicants for a Real Estate Appraiser License or Provisional License whose application is received by the board prior to November 1, 2007 must have successfully completed 90 classroom hours in courses approved by the board which meet the requirements as set out in subsections (e) - (o)[~~(d) - (n)~~] of this section.

[~~(2)~~] Of these 90 classroom hours, at least 40 classroom hours must be in fundamental real estate appraisal courses specifically approved by the board, and at least 15 classroom hours must be in a class devoted to the Uniform Standards of Professional Appraisal Practice completed within two years prior to submission of the application.

(2) Applicants for Real Estate Appraiser License or Provisional License whose application is received by the board after October 31, 2007 shall meet all educational requirements set forth by the Appraiser Qualifications Board.

(d) Appraiser Trainee. Effective with all applications received by the board after February 28, 2006, an applicant for an authorization as an Appraiser Trainee must meet all educational requirements set forth in the guidelines recommended by the Appraiser Qualifications Board.

(e) [~~(d)~~] The board may accept a course of study to satisfy educational requirements for certification or licensing established by the Act or by this section if the board has approved the course and determined it to be a course related to real estate appraisal.

(f) [~~(e)~~] The board may approve courses submitted or to be submitted by applicants for appraiser certification upon a determination of the board that:

(1) the subject matter of the course was appraisal related; provided that core real estate courses set forth in Texas Civil Statutes, Article 6573a, §7(a)(1) and (2) shall be deemed appraisal-related;

(2) the course was offered by an accredited college or university, a school accredited by a real estate or appraiser certification or licensing agency of this or another state, a professional trade association, or a service-related school such as the United States Armed Forces Institute; or the course was offered or approved by a federal agency or commission or by an agency of this state;

(3) the applicant obtained credit received in a classroom presentation the hours of instruction for which credit was given and successfully completed a final examination for course credit except as specified in subsection (l)[~~(k)~~] of this section (relating to distance education); and

(4) the course was at least 15 classroom hours in duration, which includes time devoted to examinations which are considered to be part of the course.

(g) [~~(f)~~] For the purposes of this section, a professional trade association is a nonprofit, cooperative, and voluntarily joined association of business or professional competitors that is designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting the common interest of its members.

(h) [~~(g)~~] The board may require an applicant to furnish materials such as course outlines, syllabi, course descriptions or official transcripts to verify course content or credit.

(i) [~~(h)~~] Course providers may obtain prior approval of a course by filing forms prescribed by the board and submitting the following items listed in paragraphs (1)- (4) [~~(3)~~] of this subsection to the board:

(1) a copy of any textbook, course outline, syllabus, or other written material used in the course;

(2) a copy of the question and answers to the written final examination, with an answer key or the correct answers indicated; and

(3) sample course completion certificate or other evidence of successful completion of the course; and

(4) such prior approval of courses will remain in effect for a period of two years after the date of approval.

(j) [~~(i)~~] The board shall accept classroom hour units of instruction as shown on the transcript or other document evidencing course credit if the transcript reflects the actual hours of instruction the student received. Fifteen classroom hours of credit may be awarded for one semester hour of credit from an acceptable provider. Ten classroom hours of credit may be awarded for one quarter hour of credit from an acceptable provider. Ten classroom hours of credit may be awarded for each continuing education credit from an acceptable provider. The board may not accept courses repeated within three years of the original offering unless the subject matter has changed significantly.

(k) [~~(j)~~] Teachers of appraisal courses may receive credit for meeting the educational classroom hours requirement. Teaching of appraisal courses is not acceptable for meeting the experience requirement. Applicants must provide documentation as requested by the board to establish credit for teaching appraisal courses. Education credit for teaching a particular course may be claimed only once in each three year period.

(l) [~~(k)~~] Distance education courses may be acceptable to meet the classroom hour requirement, or its equivalent, provided that the course is approved by the board and meets one of the following conditions listed in paragraphs (1) - (3) of this subsection.

(1) - (3) (No change.)

(m) [~~(l)~~] "In-house" education and training is not acceptable for meeting the educational requirements for certification or licensure.

(n) [~~(m)~~] To be acceptable for meeting the Uniform Standards of Professional Appraisal Practice (USPAP) educational requirement, a course must:

(1) - (4) (No change.)

(o) [~~(n)~~] Courses specifically approved by the Appraiser Qualifications Board (AQB) of the Appraisal Foundation, provided that the educational provider has notified the board of the AQB approval.

(p) Neither current members of the Texas Appraiser Licensing and Certification Board nor those board staff engaged in the approval of courses or educational qualifications of applicants, certificate holders or licensees shall be eligible to teach or guest lecture as part of an approved appraiser qualifying or continuing education course.

§153.15. Experience Required for Certification or Licensing.

(a) - (b) (No change.)

(c) An applicant for a state real estate appraiser license must provide evidence satisfactory to the board that the applicant possesses at least 2,000 hours of real estate appraisal experience which was acquired over a minimum of twelve months.

(d) - (f) (No change.)

§153.18. Appraiser Continuing Education.

(a) Renewing a Certification or License. An appraiser must successfully complete the equivalent of at least 28 classroom hours of

appraiser continuing education (ACE) courses approved by the board during the two year period preceding the expiration of the certification or license. Renewals shall include a minimum of seven classroom hours devoted to the Uniform Standards of Professional Appraisal Practice (USPAP). The courses must comply with the requirements set out in subsection (e)[~~(d)~~] of this section.

(b) Renewing an Appraiser Trainee Approval. As a condition for renewing an appraiser trainee authorization, a trainee whose application was accepted by the board prior to March 1, 2006 must successfully complete educational courses during the one-year period preceding the expiration of the appraiser trainee authorization being renewed. The courses must comply with the fundamental education requirements for application for licensing and certification as set out in §153.13 (f)-(o) [~~(e)-(n)~~] of this title (relating to Educational Requirements):

(1) For the first annual renewal and every other annual renewal thereafter (Third, fifth, seventh, etc.) a total of 45 classroom hours which shall include a minimum of 30 classroom hours of fundamental real estate appraisal courses and 15 classroom hours in a course devoted to the USPAP. The courses must specifically be approved by the board and shall include successful completion of an examination; and

(2) For the second annual renewal and every other annual renewal thereafter (fourth, sixth, etc.), a minimum of 30 classroom hours of fundamental real estate appraisal courses specifically approved by the board, which shall include the successful completion of an examination.

(c) For the third and subsequent annual renewals, as a condition for renewing an appraiser trainee authorization, a trainee whose application was accepted by the board after February 28, 2006 must successfully complete 14 classroom hours of appraiser continuing education courses with each request for renewal beginning with the second annual renewal provided however that an appraiser trainee must complete a 7 hour USPAP update course every two years.

(d) [~~(c)~~] The appraiser continuing education requirement as set forth in section 153.17 of this title (relating to Renewal of Certification, License or Trainee Approval) for a person previously licensed or certified by the board under this act who is on active duty in the United States armed forces and serves in this capacity outside the State of Texas are deferred until the next renewal of a license or certification provided the person furnishes a copy of official orders or other official documentation acceptable to the board showing that the person was on active duty outside the state during the person's last renewal period.

(e) [~~(d)~~] In approving ACE courses, the board shall base its review and approval of appraiser continuing education courses upon the then current appraiser qualification criteria of the Appraiser Qualifications Board (AQB).

(1) The purpose of ACE is to ensure that certified and licensed appraisers participate in programs that maintain and increase their skill, knowledge, and competency in real estate appraising.

(2) The following types of educational offerings that may be accepted for meeting the ACE requirements are listed in subparagraphs (A)-(L)[~~(K)~~] of this paragraph:

(A) A course that meets the requirements for certification or licensing also may be accepted for meeting ACE provided:

(i) The course is devoted to one or more of the appraisal related topics of the then current appraiser qualifications criteria of the Appraiser Qualifications Board (AQB) for continuing education;

(ii) the course was not repeated within a three year period; and

(iii) the educational offering is at least two hours in length.

(B) The board shall accept as continuing education any continuing education offering that complies with the guidelines of the AQB and is recognized by the Appraisal Subcommittee that a licensed or certified appraiser was awarded by a national appraiser organization approved by the board as a provider of qualifying education;

(C) A course specifically approved by the board for meeting ACE offered by a provider as specified in §153.13 (f)[~~(e)~~] (2) of this title (relating to Educational Requirements), provided the course is devoted to one or more of the appraisal related topics of the then current appraiser qualifications criteria of the AQB for continuing education and the course is at least two hours in duration;

(D) A course that meets the Texas Real Estate Commission mandatory continuing education (MCE) requirements, provided it is devoted to one or more of the appraisal related topics of the then current appraiser qualifications criteria of the AQB for continuing education, and which specifically has been approved by the board.

(E) A seminar or other educational offering that deals with appraisal issues, offered by an appraiser trade association, a related association, or by a federal or state governmental agency, provided the offering was at least two hours in duration, and is devoted to one or more of the appraisal related topics of the then current appraiser qualifications criteria of the AQB for continuing education.

(F) Distance education courses, provided that the course is approved by the board and meets one of the following conditions listed in clauses (i)-(iv) of this subparagraph:

(i) the course is presented to an organized group in an instructional setting with a person qualified and available to answer questions, provide information, and monitor student attendance, and is a minimum of two classroom hours and meets requirements for continuing education courses established by the AQB; or

(ii) the course either has been presented by an accredited college or university that offers distance education programs in other disciplines, or has received either The American Council on Education's Program on Non-collegiate Sponsored Instruction (ACE/PONSI), or its successor, approval for college credit or the AQB's approval through the AQB Course Approval Program; and the course meets the following requirements listed in subclauses (I)-(II) of this clause:

(I) the course is equivalent to a minimum of two classroom hours in length and meets the requirements for real estate appraisal-related courses established by the Appraiser Qualifications Board; and

(II) the student successfully completed a written examination proctored by an official approved by the presenting college or university or by the sponsoring organization consistent with the requirements of the course accreditation; or if a written examination is not required for accreditation, the student successfully completes the course mechanisms required for accreditation with demonstrated mastery and fluency (said mechanisms must be present in a course without an exam in order to be acceptable).

(iii) the content and length of the course must meet the requirements for appraiser continuing education established by this chapter and must be devoted to one or more of the appraisal related topics of the then current appraiser qualifications criteria of the AQB for continuing education; and

(iv) a minimum time equal to the number of hours of credit must elapse from the date of course enrollment until its completion.

(G) "In-house" education and training are not acceptable for meeting the appraiser continuing education (ACE) requirements.

(H) To be acceptable for meeting the Uniform Standards of Professional Appraisal Practice (USPAP), appraiser continuing education (ACE) requirement, a course must:

(i) Be devoted to the Uniform Standards of Professional Appraisal Practice (USPAP) With a minimum of seven classroom hours of instruction;

(ii) Use the current edition of the Uniform Standards of Professional Appraisal Practice (USPAP) promulgated by the Appraisal Standards Board of the Appraisal Foundation;

(iii) Provide each student with his or her own permanent copy of the current Uniform Standards of Professional Appraisal Practice (USPAP) promulgated by the Appraisal Standards Board of the Appraisal Foundation; and

(iv) At a minimum be based on topics covered by the Appraisal Standards Board (ASB) Instructor's Manual. This section does not limit additional USPAP related topics to be covered in the course, or utilize the national USPAP Update course, or its equivalent as determined by the AQB.

(I) Courses specifically approved by the Appraiser Qualifications Board (AQB) of the Appraisal Foundation are acceptable for meeting ACE requirements.

(J) As part of the 28 classroom hour ACE requirement, an appraiser must successfully complete a minimum of seven classroom hours of instruction devoted to the USPAP before each renewal.

(K) Appraiser continuing education credit may also be granted for participation, other than as a student, in real estate appraisal educational processes and programs. Examples of activities for which credit may be granted are teaching, educational program development, authorship of real estate appraisal textbooks, or similar activities that are determined by the board to be equivalent to obtaining appraiser continuing education. Appraisal experience may not be substituted for ACE.

(L) Neither current members of the Texas Appraiser Licensing and Certification Board nor those board staff engaged in the approval of courses or educational qualifications of applicants, certificate holders or licensees shall be eligible to teach or guest lecture as part of an approved appraiser qualifying or continuing education course.

§153.20. Guidelines for Revocation, Suspension or Denial of Licensure or Certification.

(a) - (d) (No change.)

(e) The board may not investigate under this section a complaint submitted either more than two years after the date of discovery of the incident or more than two years after the completion of any litigation involving the incident, whichever event occurs later, involving the state licensed real estate appraiser, provisional licensed appraiser, state certified real estate appraiser, or appraiser trainee who is the subject of the complaint.

(f) - (i) (No change.)

§153.21. Appraiser Trainees and Sponsors.

(a) A person desiring to be an appraiser trainee under the sponsorship of one or more state certified appraisers may apply to the board on the application form prescribed by the board on the application form prescribed by the board. For all applications received after February 28, 2006, a prospective appraiser trainee must meet the requirements set forth in Section 1103.353 of the Texas Appraiser Licensing and Certification Act, complete 75 creditable classroom hours as set forth in the Trainee Core Curriculum of the Appraiser Qualifications Board, and must pass the 15 hours National USPAP course and examination. A prospective trainee must be a citizen of the United States or a lawfully admitted alien; be at least 18 years of age; be a legal resident of this state for at least 60 days immediately before the filing of the application; and satisfy the board as to the prospective trainee's honesty, trustworthiness, and integrity. Once a person is approved as an appraiser trainee by the board, the person may perform appraisals or appraiser services only under the active, personal and diligent direction and supervision of a sponsoring certified appraiser unless one of the following events occurs:

(1) the appraiser trainee approval expires due to nonpayment of the annual renewal fee or the educational or experience requirements for renewal have not been met;

(2) the sponsorship is terminated by either the sponsor or the trainee, leaving the appraiser trainee without a sponsoring certified appraiser; or

(3) the trainee's authority to act has been suspended or revoked by the board.

(b) - (e) (No change.)

(f) Both the sponsoring certified appraiser and any authorized supervisor as well as the appraiser trainee must reside in this state.

[~~(g) An approved appraiser trainee must use the business address of his or her sponsor.~~]

(g) [~~(h)~~] An approved appraiser trainee who signs an appraisal report must include his or her TALCB approval or authorization number and the word "Trainee."

(h) Certified appraisers may sponsor no more than three trainees at one time. Notification of sponsorship of an appraiser trainee must be provided in writing to the board on a form prescribed by the board with the appropriate fee prior to the assumption of sponsorship. Termination of sponsorship of an appraiser trainee must be provided in writing to the board on a form prescribed by the board with the appropriate fee prior to the release from sponsorship. A sponsor may designate another certified appraiser to serve as an authorized supervisor on specific appraisal projects for which state authorization is required. An authorized supervisor assumes the same responsibilities as a sponsor when supervision the work of an appraiser trainee.

(i) Certified appraisers who sponsor appraiser trainees must provide the trainee with access to any appraisals and work files completed under the sponsor or any authorized supervisor designated by the sponsor.

(j) Certified appraisers who sponsor appraiser trainees or serve as an authorized supervisor must be in good standing and not subject to any disciplinary action within the last two years that affects the supervisor's legal eligibility to engage in appraisal practice.

§153.25. Temporary Non-Resident Registration.

(a) A person licensed or certified as an appraiser by another state, commonwealth, or territory may register with the board so as to qualify to appraise real property in this state without holding a license or certification issued under the Act if:

(1) the state, commonwealth or territory licensing and certification program under which the person holds a license or certification has not been disapproved by the Appraisal Subcommittee; and

(2) the appraiser's business in this state is of a temporary nature not to exceed six months[~~60 days~~].

(b) - (c) (No change.)

(d) An appraiser registered under this subsection may apply for a 90[~~150~~] day extension to the original expiration date of the temporary non-resident registration, provided the appraiser:

[~~(1) is performing an appraisal in a federally related transaction;~~]

(1) [~~(2)~~] is continuing the same appraisal assignment listed on the original Temporary Non-Resident Appraiser Registration application; and

(2) [~~(3)~~] requests an extension on a form prescribed by the board, received by the board, or postmarked prior to the expiration of the current temporary non-resident registration.

§153.27. Certification and Licensure by Reciprocity.

(a) A person who is licensed or certified as an appraiser under the laws of a state having licensure or certification requirements that have not been disapproved by the Appraisal Subcommittee may apply for a license or certification under the Act by completing and submitting to the board the application for licensure or certification and paying to the board the fee [~~, both of which are required by the state of the person present certification~~]. An applicant for certification or licensure by reciprocity also must complete and submit a Supplement to Application for Appraiser Certification or Licensing by Reciprocity [~~(TALCB Form 10.0)~~] or its successor.

(b) - (d) (No change.)

(e) A person holding a license or certification by reciprocity must pay the federal registry fee and other fees imposed by the board. The total application fees required for certification or licensure by reciprocity shall be equal to the amount of the application, processing, and issuance fees required for a Texas certified or licensed appraiser to become certified or licensed [~~in the applicant's home state of present licensure or certification, prorated for one year, but not less than $100. In addition, a one-year federal registry fees shall be required~~].

(f) A reciprocal license or certification expires on the same date that the license or certification held by the applicant in the applicant's home state expires but in no instance more two years from the date of issuance of the reciprocal license or certification[~~or on the first anniversary of the date the reciprocal license or certification was issued, whichever comes first~~].

(g) - (h) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 16, 2005.

TRD-200504105
Wayne Thorburn
Commissioner
Texas Appraiser Licensing and Certification Board
Earliest possible date of adoption: October 30, 2005
For further information, please call: (512) 465-3950

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CHAPTER 157. RULES RELATING TO PRACTICE AND PROCEDURE

SUBCHAPTER C. POST HEARING

22 TAC §§157.15, 157.18, 157.20

The Texas Appraiser Licensing and Certification Board proposes amendments to §§157.15, 157.18, and 157.20. Section 157.15 provides clarification in terminology by replacing the term "decision" for the term "proposal for decision or proposed decision." Section 157.18 replaces "order by the board" with "order by the administrative law judge" and increases the period from 45 days to 90 days in which Board action must be taken on a final decision or order. Section 157.20 states that the respondent will pay the cost of preparing a copy of any contested case transcripts.

Wayne Thorburn, Commissioner, Texas Appraiser Licensing and Certification Board, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Mr. Thorburn also has determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of these amendments provides clarification in terminology for terms used in the complaint process and incorporates the modifications brought about with SB 382 that will expedite the complaint process. There will be no effect on small businesses. There will be no cost to individuals who are required to comply with the proposed amendments.

Comments on the proposal may be submitted to Wayne Thorburn, Commissioner, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188.

The amendments are proposed under the Texas Appraiser Licensing and Certification Act, Subchapter D, Board Powers and Duties (Occupations Code, Chapter 1103), which provides the board with authority to adopt rules under Sec.1103.151 Rules Relating to Certification and Licenses.

No other code, article, or statute is affected by this proposal.

§157.15. [~~Proposals for~~] Decision.

(a) The administrative law judge shall serve on the parties a [~~proposal for~~] decision which shall contain:

(1) a statement of the administrative law judge's reasons for the [~~proposed~~] decision;

(2) findings of fact and conclusions of law, separately stated, that are necessary to the [~~proposed~~] decision.

(b) Service. When a [~~proposal for~~] decision is prepared, a copy of the decision [~~proposal~~] shall be served by the administrative law judge on each party, [~~his~~] the respondent's attorney of record or representative, and the board. Service of the decision [~~proposal~~] shall be in accordance with Section 157.9 (b) [~~§157.17~~] of this title (relating to Notice of Hearing).

§157.18. Motions for Rehearing; Finality of Decisions.

(a) Filing times. A motion for rehearing must be filed within 20 days after a party has been notified, either in person or by certified mail, return receipt requested, of the final decision or order by the administrative law judge [~~board~~].

(b) Board action. Board action on a motion must be taken within 90 [~~45~~] days after the date of rendition of the final decision or

order. If board action is not taken within the 90 [~~45~~-]day period, the motion for rehearing is overruled by operation of law unless an extension is granted by the board for taking an action on said motion. [~~No extension shall exceed 90 days for the date of rendition of the final decision or order.~~]

(c) - (d) (No change.)

§157.20. Judicial Review.

(a) - (b) (No change.)

(c) Pursuant to Texas Government Code Section 2001.177, a party seeking judicial review of a final decision of the Texas Appraiser Licensing and Certification Board in a contested case shall pay all costs of preparing the original or certified copy of a record of the contested case proceedings.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 14, 2005.

TRD-200504077
Wayne Thorburn
Commissioner
Texas Appraiser Licensing and Certification Board
Earliest possible date of adoption: October 30, 2005
For further information, please call: (512) 465-3959

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22 TAC §157.16, §157.17

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Appraiser Licensing and Certification Board or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Appraiser Licensing and Certification Board proposes the repeal of §157.16 Exceptions and Replies and §157.17 Final Decisions and Orders. The repeal of Section 157.16 and Section 157.17 are proposed to remove outdated language that is no longer applicable to the current complaint process, because of changes in the statute due to the implementation of Senate Bill 382, 79th Legislature.

Wayne Thorburn, Commissioner, Texas Appraiser Licensing and Certification Board, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Mr. Thorburn also has determined that for each year of the first five years the proposed repeals are in effect, the public benefit will be a more expeditious complaint process brought about with Senate Bill 382, 79th Legislature. There will be no effect on small businesses. There will be no cost to individuals who are required to comply with the proposed repeals.

Comments on the proposal may be submitted to Wayne Thorburn, Commissioner, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188.

The repeals are proposed under the Texas Appraiser Licensing and Certification Act, Subchapter D, Board Powers and Duties (Occupations Code, Chapter 1103), which provides the board with authority to adopt rules under Sec.1103.151 Rules Relating to Certification and Licenses.

No other code, article, or statute is affected by this repeal.

§157.16. Exceptions and Replies.

§157.17 Final Decisions and Orders.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 16, 2005.

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Wayne Thorburn
Commissioner
Texas Appraiser Licensing and Certification Board
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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 30. OCCUPATIONAL LICENSES AND REGISTRATIONS

The Texas Commission on Environmental Quality (commission) proposes amendments to §§30.3, 30.5, 30.7, 30.33, 30.231, and 30.244. The commission also proposes new §30.247.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The proposed rules implement requirements in House Bill 2510, 79th Legislature, 2005, related to the regulation of on-site sewage disposal systems using aerobic treatment and the maintenance of those systems. The proposed rules also address implementation of enforcement for noncompliance. House Bill 2510 impacts two chapters within 30 TAC: Chapter 30, Occupational Licenses and Registrations, and Chapter 285, On-Site Sewage Facilities. This proposal addresses the revisions to Chapter 30. The changes to Chapter 285 will be addressed in a separate rulemaking.

This proposed rulemaking addresses the registration requirements for maintenance providers that provide service or maintenance of on-site sewage disposal systems using aerobic treatment.

The commission administers the On-Site Sewage Facility (OSSF) Licensing and Registration Program that currently includes licenses or registrations for Installer I, Installer II, Site-Evaluator, Apprentice, and Designated Representative.

The proposed rules would create a registration program for maintenance providers defined as a person that services or maintains on-site sewage disposal systems using aerobic treatment.

The proposed program is being placed with other similar programs in Chapter 30, Subchapters A and G.

The proposed rules further define the commission's regulations regarding servicing or maintenance of OSSFs using aerobic

treatment under Texas Health and Safety Code (THSC), Chapter 366. The purpose of the statute is to regulate maintenance providers and their ability to service and maintain on-site sewage disposal systems using aerobic treatment. The failure of an OSSF is the fundamental cause of OSSF-related public health hazards and provides a medium for the transmission of disease. The failure of an OSSF may be caused by a large number of circumstances, including inadequate soil texture, improper construction, improper planning, improper installation, and inadequate maintenance. Approximately 25% of all homes in Texas are on OSSF systems. In Fiscal Year 2004 alone, there were more than 41,000 newly permitted OSSFs in Texas.

The proposed rules specify requirements for maintenance providers to obtain an occupational registration to perform service and maintenance of on-site sewage disposal systems using aerobic treatment. The significant revisions in these rules include changes to the requirements for maintenance providers, enforcement proceedings, and training for maintenance providers.

SECTION BY SECTION DISCUSSION

Subchapter A--Administration of Occupational Licenses and Registrations

The proposed amendment to §30.3, Purpose and Applicability, would add On-Site Sewage Facility Maintenance Providers as a program regulated by the commission.

The proposed amendment to §30.5, General Provisions, would add THSC, §366.0515, to the list of statutes describing activities regulated by the commission.

The proposed amendment to §30.7, Definitions, would define the term "Maintenance provider" as a person that, for compensation, services or maintains on-site sewage disposal systems using aerobic treatment. Additionally, the proposed amendment to §30.7 would define the term "Persons" as an individual, corporation, organization, government or governmental subdivision or agency, business trust, partnership, association, or any other legal entity, as referenced in 30 TAC §3.2, Definitions. The commission proposes corresponding changes throughout the amended rules to conform the language with this definition. Finally, the proposed amendment to §30.7 would define the term "Aerobic treatment system owner" as persons, that in their individual capacities own a single-family dwelling that is serviced by an on-site sewage disposal system using aerobic treatment.

The proposed amendment to §30.33, License or Registration Denial, Warning, Suspension, or Revocation, in accordance with THSC, §366.0515, would also allow the executive director, in a manner provided by Texas Water Code (TWC), Chapter 7, Subchapter G, to revoke the registration of a maintenance provider for three or more violations of an order, resolution, or rule described by THSC, §366.0515.

Subchapter G--On-Site Sewage Facilities Installers, Apprentices, Designated Representatives, and Site Evaluators

The commission proposes to change the title of Subchapter G to On-Site Sewage Facilities Installers, Apprentices, Designated Representatives, Maintenance Providers, and Site Evaluators.

The proposed amendment to §30.231, Purpose and Applicability, would add maintenance providers to those persons performing certain duties related to on-site sewage disposal systems using aerobic treatment. It would also require that those persons that perform the task listed in §30.231(a)(5), meet the qualifications of this chapter, be registered according to Subchapter A, unless exempt under §30.244, and comply with the requirements of Chapter 285.

The proposed amendment to §30.244, Exemptions, would exempt an aerobic treatment system owner, who elects to maintain the system, from the requirement to be registered with the agency as a maintenance provider.

The proposed new §30.247, Registrations of Maintenance Providers, would detail the requirements for the initial registration and renewal registrations for persons that service or maintain on-site sewage disposal systems using aerobic treatment or any part of an on-site sewage disposal system using aerobic treatment for compensation.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Jeff Horvath, Analyst, Strategic Planning and Assessment Section, determined that for the first five-year period that the proposed rules are in effect, fiscal implications are anticipated for the agency and no fiscal implications are anticipated for other units of state and local government. Maintenance providers that provide service or maintenance of on-site sewage disposal systems using aerobic treatment will be required to be registered with the agency and to pay registration and training fees, though these costs are not expected to be significant.

The proposed rules would implement requirements of House Bill 2510 by creating a registration program for persons that service or maintain for compensation, on-site sewage disposal systems using aerobic treatment. The proposed rules would specify the requirements needed to obtain an occupational registration to perform service and maintenance on on-site sewage disposal systems using aerobic treatment, as well as address training requirements and enforcement for noncompliance.

The proposed rules would require that maintenance providers hold a registration issued by the commission by September 1, 2006. To obtain a registration, a maintenance provider must: 1) meet the requirements of 30 TAC Chapter 30, Subchapter A; 2) submit a completed application and a $70 fee to the agency on a form approved by the executive director; 3) submit documentation by the manufacturer of an on-site sewage disposal system using aerobic treatment that the applicant is certified to maintain the on-site sewage facility systems under a maintenance contract; and 4) submit any additional information required by the executive director. Aerobic treatment system owners who elect to maintain their systems must comply with 30 TAC Chapter 285, including without limitations the Chapter 285 training requirements.

The Compliance Support Division of the agency will be required to accept registration applications and fees for review and issuance of registration certificates by March 1, 2006. Agency staff will also either be responsible for the development of curriculum or outlines for training manuals, or for the approval of a training course that is to be used by the manufacturers in providing the required training. The agency may contract with a training provider to develop a course and training manual to be used by manufacturers. The cost for the development of the manual and course could range from $10,000 to $40,000.

As a result of the rules, modifications to the current database (CCEDS) will need to be made to incorporate the registration program. These modifications will need to be completed prior

to March 1, 2006, the date that the commission is required to accept applications for the registrations. The modifications to CCEDS may cost in the range of $20,000. Costs to implement the new program will be offset through the collection of the $70 registration fee. Maintenance providers will also be required to pay $70 every two years for renewal of the registration. It is estimated that there may be anywhere from 2,500 to 4,000 maintenance providers that would register with the agency over a two-year period that would generate approximately $175,000 to $280,000 in fee revenue. Fee revenue will be deposited into, and expenses will be paid from, the Occupational Licensing Account 0468. The legislature appropriated the agency $166,960 in Fiscal Year 2006 and $127,470 in Fiscal Year 2007 to administer the program.

PUBLIC BENEFITS AND COSTS

Mr. Horvath also determined that for each year of the first five years that the proposed rules are in effect, the public benefit anticipated from the changes in the proposed rules will be compliance with state law and the protection of the public health and environment through ensuring the proper servicing and maintenance of on-site sewage disposal systems using aerobic treatment.

Fiscal implications are anticipated to businesses and individuals as a result of the administration and enforcement of the proposed rules, though these costs are not considered significant. Maintenance providers must hold a registration issued by the commission by September 1, 2006. Maintenance providers wishing to obtain a registration will likely have training costs estimated to be between $150 and $500. This training cost would be paid to the OSSF system manufacturer providing the training. In addition, the maintenance providers will have to pay an initial registration fee of $70 and another $70 every two years thereafter. It is estimated that between 2,500 and 4,000 maintenance providers will be registered.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rulemaking. It is not known how many of the estimated 2,500 to 4,000 maintenance providers are small or micro-businesses, but for those that are, they can expect to pay between $150 and $500 in training costs, $70 for an initial registration fee, and $70 every two years thereafter.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rules in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the proposed rules do not meet the criteria for a major environmental rule. Texas Government Code, §2001.0225, defines a major environmental rule as one that is specifically intended to protect the environment, or reduce risks to human health from environmental exposure. The rules are intended to create a registration program for maintenance providers that will service and maintain on-site sewage disposal systems using aerobic treatment. The rules would define a maintenance provider as a person that, for compensation, services or maintains an on-site sewage disposal system using aerobic treatment. Training requirements and enforcement for noncompliance would be addressed. Protection of human health and the environment may be a by-product of the proposed rules, but it is not the specific intent of the proposed rules. Furthermore, the proposed rules would not adversely affect, in a material way, the economy, a section of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state, because the rules would simply add registration requirements for maintenance providers and address training requirements and enforcement for noncompliance. The proposed rules do not meet the definition of a major environmental rule as defined in the Texas Government Code.

In addition, the new and amended sections are not subject to Texas Government Code, §2001.0225, because they do not meet the criteria specified in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225(a), applies to a rule adopted by an agency, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

The amendments and new section to Chapter 30 do not meet any of these requirements. First, there are no federal standards that these rules would exceed. The United States Environmental Protection Agency does not have a federal program for OSSFs and does not establish requirements for states that implement their own OSSF programs. Second, the rules do not exceed an express requirement of state law but are being adopted to implement state law. Third, there is no delegation agreement that would be exceeded by these rules. Fourth, the commission adopts these rules to allow registration requirements for maintenance providers and address training requirements and enforcement for noncompliance in compliance with the statute. Therefore, the commission does not adopt the rules solely under the commission's general powers. These rules do not meet the criteria for a major environmental rule as defined by Texas Government Code, §2001.0225.

The commission invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission prepared a takings impact assessment for these proposed rules under Texas Government Code, §2007.043. The specific purpose of the proposed rules is create a registration program for maintenance providers. The rules would define a maintenance provider as a person that, for compensation, services or maintains an on-site sewage disposal system using aerobic treatment. The proposed rules would substantially advance this specific purpose by setting forth the registration requirements for maintenance providers and by setting forth rules that address training requirements and enforcement for noncompliance. The proposed rules do not constitute a takings because they would not burden private real property.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rules are not subject to the Texas Coastal Management Program.

SUBMITTAL OF COMMENTS

Comments may be submitted to Joyce Spencer, MC 205, Texas Register Team, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Project Number 2005-039-030-CE. Comments must be received by 5:00 p.m., Monday, October 31, 2005. For further information, please contact Terry Thompson, Compliance Support Division, at (512) 239-6095.

SUBCHAPTER A. ADMINISTRATION OF OCCUPATIONAL LICENSES AND REGISTRATIONS

30 TAC §§30.3, 30.5, 30.7, 30.33

STATUTORY AUTHORITY

The amendments are proposed under the authority granted to the commission by the Texas Legislature in TWC, Chapter 37 and THSC, Chapter 366. The amendments are also proposed under the general authority granted in TWC, §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state; TWC, §5.102, which establishes the commission's authority necessary to carry out its jurisdiction; TWC, §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013; and TWC, §7.002, which authorizes the commission to enforce provisions of the TWC and the THSC.

The proposed amendments implement TWC, §37.002, which requires the commission to adopt rules to establish registration requirements for maintenance providers that will service and maintain on-site sewage disposal systems using aerobic treatment under THSC, §366.0515, and to impose administrative and criminal penalties under TWC, §§7.173 - 7.175.

§30.3. Purpose and Applicability.

(a) The purpose of this chapter is to consolidate the administrative requirements and establish uniform procedures for the occupational licensing and registration programs prescribed by Texas Water Code, Chapter 37. This subchapter contains general procedures for issuing, renewing, denying, suspending, and revoking occupational licenses and registrations. Subchapters B - K of this chapter (relating to Backflow Prevention Assembly Testers; Customer Service Inspectors; Landscape Irrigators and Installers; Leaking Petroleum Storage Tank Corrective Action Project Managers and Specialists; Municipal Solid Waste Facility Supervisors; On-Site Sewage Facilities Installers, Apprentices, Designated Representatives, Maintenance Providers, and Site Evaluators; Water Treatment Specialists; Underground Storage Tank On-Site Supervisor Licensing and Contractor Registration; Wastewater Operators and Operations Companies; and Public Water System Operators and Operations Companies) contain the program-specific requirements related to each program.

(b) This chapter applies to applications for issuance or renewal of licenses or registrations that are received on or after January 1, 2002, except that maintenance providers are not required to obtain a registration as a maintenance provider prior to September 1, 2006.

(c) The requirements of this chapter apply to the following occupational licenses and registrations:

(1) - (5) (No change.)

(6) on-site sewage facility [~~(OSSF)~~] installers, designated representatives, apprentices, maintenance providers, and site evaluators;

(7) - (10) (No change.)

§30.5. General Provisions.

(a) A person must be licensed or registered by the commission before engaging in an activity, occupation, or profession described by Texas Water Code, §§26.0301, 26.3573, 26.452, 26.456, 34.007, or 37.003, or Texas Health and Safety Code, §§341.033, 341.034, 341.102, 341.103, 361.027, 366.014, [~~or~~] 366.071, or 366.0515. The commission shall issue a license or registration only after an applicant has met the minimum requirements for a license or registration as specified in this chapter.

(b) A person may not advertise or represent themselves to the public as a holder of a license or registration unless that person possesses [~~they possess~~] a current license or registration. A person may not advertise or represent to the public that it can perform services for which a license or registration is required unless it holds a current license or registration, or unless it employs individuals who hold current licenses.

(c) - (e) (No change.)

§30.7. Definitions.

The following words and terms, when used in this subchapter, [~~shall~~] have the following meanings, unless the context clearly indicates otherwise.

(1) (No change.)

(2) Aerobic treatment system owner--Persons that in their individual capacities own a single-family dwelling that is serviced by an on-site sewage disposal system using aerobic treatment.

(3) [~~(2)~~] Continuing education--Job-related training approved by the executive director used for renewal of licenses and registrations.

(4) [~~(3)~~] License--An occupational license issued by the commission to a person [~~an individual~~] authorizing the person [~~individual~~] to engage in an activity covered by this chapter.

(5) Maintenance provider--A person that, for compensation provides service or maintenance for one or more on-site sewage disposal systems using aerobic treatment.

(6) Person--As defined in §3.2 of this title (relating to Definitions).

(7) [~~(4)~~] Registration--An occupational registration issued by the commission to a person authorizing the person to engage in an activity covered by this chapter.

(8) [~~(5)~~] Training credit--Hours of credit allowed by the executive director for attendance at an approved training event.

§30.33. License or Registration Denial, Warning, Suspension, or Revocation.

(a) [~~Denial.~~] The executive director may deny an initial or renewal application for:

(1) insufficiency [~~Insufficiency~~]. The executive director shall notify the applicant of the executive director's intent to deny the application and advise the applicant of the opportunity to file a motion for reconsideration under §50.39 of this title (relating to Motion for Reconsideration). The executive director may determine an application is insufficient for the following reasons:

(A) - (C) (No change.)

(2) cause [~~Cause~~]. After notice and opportunity for a hearing, the commission may deny an application for a license or registration by an applicant who:

(A) - (D) (No change.)

(E) fails to keep and transmit records as required by a statute [~~statue~~] within the commission's jurisdiction or a rule adopted under such a statute; or

(F) (No change.)

(b) [~~Warning.~~] If a person causes, contributes to, or allows a violation of this chapter, the executive director may issue a warning letter. The letter shall be placed in the person's permanent file maintained by the executive director. This letter shall be a warning that further violations or offenses by the person may be grounds for suspension, revocation, enforcement action, or some combination [~~thereof~~]. A warning is not a prerequisite for initiation of suspension, revocation, or enforcement proceedings.

(c) [~~Suspension or revocation.~~] After notice and opportunity for a hearing, the commission may suspend or revoke a license or registration on any of the grounds in Texas Water Code, §7.303(b) or suspend or revoke a maintenance provider registration on any of the grounds in Texas Health and Safety Code, §366.0515(m). A license may also be suspended if a person is identified by the Office of the Attorney General as being delinquent on child support payments (upon receipt of a final order suspending a license or registration, the executive director shall proceed as described in Texas Family Code, Chapter 232).

(d) - (e) (No change.)

(f) The following procedures for renewal apply to persons that [~~who~~] have had their license or registration suspended.

(1) - (2) (No change.)

(g) Persons that [~~who~~] have had their license or registration revoked shall not have their license or registration automatically reinstated after the revocation period. After the revocation period has ended, a person may apply for a new license or registration according to this chapter.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 15, 2005.

TRD-200504096
Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: October 30, 2005
For further information, please call: (512) 239-5017

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SUBCHAPTER G. ON-SITE SEWAGE FACILITIES INSTALLERS, APPRENTICES, DESIGNATED REPRESENTATIVES, MAINTENANCE PROVIDERS, AND SITE EVALUATORS

30 TAC §§30.231, 30.244, 30.247

STATUTORY AUTHORITY

The amendments and new section are proposed under the authority granted to the commission by the Texas Legislature in TWC, Chapter 37 and THSC, Chapter 366. The amendments and new section are also proposed under the general authority granted in TWC, §5.013, which establishes the general jurisdiction of the commission over areas of responsibility as assigned to the commission under the TWC and other laws of the state; TWC, §§5.102, 5.103, and 5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013; and TWC, §7.002, which authorizes the commission to enforce provisions of the TWC and the THSC.

The new and amended sections implement TWC, §37.002, which requires the commission to adopt rules to establish registration requirements for maintenance providers that will service and maintain on-site sewage disposal systems using aerobic treatment under THSC, §366.0515, and to impose administrative and criminal penalties under TWC, §§7.173 - 7.175.

§30.231. Purpose and Applicability.

(a) The purpose of this subchapter is to establish qualifications for issuing and renewing licenses and registrations for a person that [~~an individual who~~]:

(1) constructs any part of an on-site sewage facility [~~(OSSF)~~];

(2) (No change.)

(3) performs the duties of a site evaluator; [~~or~~]

(4) performs the duties of an apprentice; or[~~.~~]

(5) performs the duties of a maintenance provider.

(b) A person that [~~An individual who~~] performs any of the tasks listed in subsection (a) of this section must meet the qualifications of this subchapter and be licensed or registered according to Subchapter A of this chapter (relating to Administration of Occupational Licenses and Registrations), unless exempt under §30.244 of this title (relating to Exemptions), and must comply with the requirements of Chapter 285 of this title (relating to On-Site Sewage Facilities).

(c) (No change.)

§30.244. Exemptions.

(a) Persons that in their individual capacities own a single-family dwelling that is serviced by an on-site sewage disposal system using aerobic treatment are not required to be a licensed installer in order to install or repair an on-site sewage facility servicing that single-family dwelling. Such person must meet all permitting, construction, and maintenance requirements of the permitting authority. If that person compensates a person to construct any portion of an on-site sewage facility, the individual performing the work must be a licensed installer. This provision does not apply to developers or to

those that develop property for sale or lease. [~~The individual owner of a single family dwelling is not required to be a licensed installer in order to install or repair an on-site sewage facility (OSSF) on the owner's property. This provision does not apply to developers or to those that develop property for sale or lease. If the owner compensates a person to construct any portion of an OSSF, the individual performing the work must be a licensed installer. The owner must meet all permitting, construction, and maintenance requirements of the permitting authority. The owner must have the site evaluation performed by an individual who possesses either a current site evaluator or a professional engineer license.~~]

(b) If the aerobic treatment system owner elects to maintain the system, the aerobic treatment system owner is not required to register with the agency as a maintenance provider, but must comply with the requirements of Chapter 285 of this title (relating to On-Site Sewage Facilities).

(c) [~~(b)~~] A licensed electrician who installs the electrical components, or a person that [~~who~~] delivers a treatment or pump tank and sets the tank or tanks into an excavation, is not required to have an installer license.

(d) [~~(c)~~] A professional engineer may perform site evaluations without obtaining a site evaluator license.

§30.247. Registration of Maintenance Providers.

(a) A maintenance provider must be registered with the executive director.

(b) To register as required by Subchapter A of this chapter (relating to Administration of Occupational Licenses and Registrations), a person must:

(1) meet the requirements of Subchapter A of this chapter;

(2) submit a completed application and a $70 fee to the executive director on a form approved by the executive director;

(3) submit documentation by the manufacturer of an on-site sewage disposal system using aerobic treatment that the applicant is certified to maintain the on-site sewage facility systems under a maintenance contract; and

(4) any additional information required by the executive director.

(c) To renew a maintenance provider registration, a maintenance provider must every two years:

(1) meet the requirements in Subchapter A of this chapter; and

(2) submit a completed renewal application and a $70 fee to the executive director on a form approved by the executive director.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Stephanie Bergeron Perdue
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Texas Commission on Environmental Quality
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CHAPTER 116. CONTROL OF AIR POLLUTION BY PERMITS FOR NEW CONSTRUCTION OR MODIFICATION

The Texas Commission on Environmental Quality (TCEQ or commission) proposes amendments to §§116.12, 116.150, 116.151, 116.160, and 116.610; the repeal of §§116.180 - 116.183, 116.410, and 116.617; and new §§116.121, 116.180, 116.182, 116.184, 116.186, 116.188, 116.190, 116.192, 116.194, 116.196, 116.198, 116.400, 116.402, 116.404, 116.406, 116.617, and 116.1200.

Sections 116.400, 116.402, 116.404, 116.406, and 116.1200 are proposed with identical language as currently exists in §§116.180 - 116.183, and 116.410, respectively. The amended, repealed, and new sections will be submitted to the United States Environmental Protection Agency (EPA) as revisions to the state implementation plan (SIP).

The commission also proposes to rename the title of Subchapter C from Hazardous Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, Section 112(G), 40 CFR Part 63) to Plant-Wide Applicability Limits; to rename the title of Subchapter E from Emergency Orders to Hazardous Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, Section 112(G), 40 CFR Part 63); and to add a new Subchapter K, Emergency Orders.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

EPA adopted revisions to 40 Code of Federal Regulations (CFR) §§52.21, 51.165, and 51.166 in the December 31, 2002, publication of the *Federal Register* (67 FR 251), which amended the application of federal new source review (NSR). Federal NSR is triggered by a new major source or major modification. If the area in which the source will be located is also classified as nonattainment for a pollutant that will be emitted by the source, the source would need to offset the emission increase with emission decreases at other facilities or through the purchase and retirement of emission reduction credits. The source would also have to apply control technology that meets the lowest achievable emission rate to the new and modified units.

Federal NSR reform is intended to limit the instances where federal NSR will be required of facilities that undergo modifications. It will streamline plant modifications by allowing small changes to be completed without the delay associated with federal NSR. Currently, most modifications are evaluated to determine the applicability of federal NSR through a netting exercise. Netting is an accounting exercise where, prior to the modification of a facility, the sum of emission increases and decreases over a specified period of time at the plant site is determined. If the total exceeds the major modification threshold, then the modification is subject to federal NSR. NSR reform provides an additional path that may be taken to avoid federal NSR applicability (plant-wide applicability limit) as well as methods to minimize the emission increase determined in the netting exercise (baseline and actual to projected actual emission rates).

Plant-wide Applicability Limit (PAL)

Plant-wide applicability limit (PAL) is proposed for implementation by building on the current state permitting flexibility provided by the state flexible permit. A plant may have several facilities producing the same pollutant and may apply for this permit to

establish an emission limit on a particular pollutant for those facilities. This limit would be established at the baseline emission rate for the facilities and best available control technology (BACT) must be implemented, on average, on the facilities over an implementation period. This option would be available to state flexible permit holders based on their previous flexible permit review. Modifications at individual facilities resulting in emission increases that stay below the plant-wide limit are exempt from netting. The commission solicits comments on its proposed method of implementing the PAL and the relative benefits of the proposal versus the federal PAL. The commission also solicits comments on the benefits of adopting both the proposed version and the federal version of PAL into the commission's rules, such as a specific PAL model based on an east/west division of the state.

Baseline

The emission increase associated with a modification is determined by taking the difference, in tons per year, between the proposed emission rate and the actual average annual emissions (or baseline emissions) during the baseline period. The baseline period can be any consecutive 24-month period in the previous ten years (typically that period where the emissions from the facility to be modified are the greatest). The baseline period is a 24-month period in the previous five years for electric utility steam generating units.

Actual to Projected Actual Emissions

Actual to projected actual emissions consist of two parts. The first allows for the use of projected actual emissions rates based on projected demand rather than relying solely on the potential to emit, or proposed allowable emission rate, to determine the emission increase associated with the modification at modified and affected units. Secondly, it extends the concept of excluding demand growth from the projected emission increase to all source types by allowing sources to remove that portion of emission increase (the difference between the projected actual emission rate and the baseline emission rate) that could have been accommodated in the baseline years.

NSR reform included two other components, the clean unit designations, and pollution control projects.

As a result of a petition for review of EPA's final action, on June 24, 2005, the District of Columbia Circuit Court of Appeals in *State of New York, et al v. U.S. Environmental Protection Agency*, No. 02-1387, vacated the clean unit and pollution control project provisions of the rule and remanded recordkeeping provisions to the EPA. As a result of this court decision the commission is not proposing rule changes concerning clean unit and federal pollution control projects.

Although the commission is not proposing a federal pollution control project rule, in this rulemaking it proposes changes to the standard permit for state pollution control projects. The standard permit for state pollution control projects allows projects that will have better or equivalent controls, but increases and decreases for projects qualifying for the standard permit for state pollution control projects requires evaluation for federal permitting applicability, which may include netting calculations. This new requirement for the state pollution control projects is also a result of the June 24, 2005, ruling, which does not allow an NSR exemption for incidental emission increases resulting from pollution control projects. In addition, the standard permit for state pollution control projects may be used to authorize emissions reductions and collateral increases for facilities authorized under a permit by rule as long as any collateral increases do not cause emission rates to exceed limits found in 30 TAC §106.4(a), or other standard permits as long as any collateral increases do not exceed the limits of §116.610.

The executive director had considered a federal pollution control project standard permit(FPCP) as a method to authorize collateral emissions that would otherwise qualify as major sources or modifications. The FPCP was part of the NSR reform program adopted by the EPA. A June 24, 2005, decision by the federal Court of Appeals for the District of Columbia vacated that portion of the EPA rules that authorized the FPCP. As a result of this ruling, the commission is not able to propose the FPCP as a method that excludes nonattainment and prevention of significant deterioration (PSD) review without a modification of the court of appeals' decision upon rehearing or appeal. The commission seeks comments on alternative processes for authorizing landfill gas flares and other ancillary facilities that have collateral emissions that would be considered major modifications or major sources for nonattainment or PSD review.

SECTION BY SECTION DISCUSSION

The commission proposes administrative changes throughout this rulemaking to be consistent with guidance provided in the *Texas Legislative Council Drafting Manual*, November 2004, and to conform with Texas Register requirements and agency guidelines.

§116.12. Federal Permit Definitions.

The commission proposes to amend §116.12 by changing the title to reflect the addition of all definitions associated with federal NSR permit applicability analysis. In addition to the changes necessary to incorporate NSR reform into the nonattainment permit program, changes associated with including PSD applicability analysis in §116.12 are also proposed. These definitions now apply to the revised sections of the PSD rules in Chapter 116, Subchapter B, Division 6 of this chapter as well as the new sections associated with PAL permits.

The definition of actual emissions, in paragraph (1), has been modified to exclude this definition from being used in the federal NSR applicability test. When determining whether the emission increase associated with a project is significant, the baseline actual emissions, defined in new paragraph (3), must be used. Paragraph (3)(A) allows electric utility steam generating units to identify baseline actual emissions as the average rate, in tons per year, at which an existing unit emitted the pollutant during any consecutive 24-month period within the five-year period immediately preceding construction. A different time period may be selected if it is shown to be more representative of normal source operations. This is consistent with past guidance provided by EPA for these sources.

Proposed paragraph (3)(B) allows other source types to choose 24 consecutive months in the ten years preceding start of construction to establish their baseline emissions. In this case, the source must adjust this emission rate down for any emission limitations that would currently apply to the facility. These limitations include requirements in the SIP, federal rules with the exception of 40 CFR Part 63, or permit requirements that would apply when the analysis is completed.

Proposed paragraph (3)(C) identifies baseline emissions for new facilities as being zero and also defines baseline emissions for new facilities that have operated for less than two years to be the facility's potential to emit. Paragraph (3)(D) would require

that a project affecting all facilities use the same 24-month baseline period for each pollutant. For example, if a project affected five facilities that emitted volatile organic compounds and particulate matter (PM), all five would have to identify the same baseline period for volatile organic compounds; however, a different 24-month period could be chosen for particulate matter. The source must have sufficient records to document the baseline emissions, which cannot have occurred before November 15, 1990.

Proposed paragraph (3)(D) also requires that baseline emission rates be adjusted down to exclude noncompliant emissions. The EPA's reform rule requires that baseline emissions include startup, shutdown, and malfunction emissions. The commission's policy, which has evolved over a number of years, currently allows for permitting of emissions from certain maintenance, startup, and shutdown activities. Changes to this policy are being evaluated. The commission has been unsuccessful in getting clarification on the EPA's basis for inclusion of malfunction emissions in the baseline calculation. Given these circumstances, proposed paragraph (3)(E) has been added to allow for the inclusion of those emissions that could currently be authorized by permit to be included in the baseline. Given that sources would become aware of this change with adoption of this rule amendment, the effort involved in authorizing these types of emissions, and the baseline period having to be within ten years of the project, this method of determining baseline emissions would be available for some time but not beyond ten years from the effective date of this rule amendment. After that date, all baseline emissions will have to have been authorized under minor or major NSR. The proposed paragraph (3)(D) also requires that fugitive emissions be included in the baseline to the extent they can be quantified.

Proposed paragraphs (6) and (7), associated with the federal definition of clean coal, have been added as a result of including PSD applicability into the definitions under this section. The definition of *de minimis* threshold test would be renumbered as paragraph (11) and would be revised to reference major modification thresholds, including those for PSD as well as nonattainment.

The federal definition of electric utility steam generating unit is provided in proposed new paragraph (12). It identifies those units that are subject to a different baseline emissions determination than other source types. New paragraph (13) would define federally regulated NSR pollutant, providing a comprehensive list of pollutants that may be subject to federal NSR.

The definition for major stationary source would be renumbered as paragraph (15) and would be modified to remove references to facility for clarity, as well as to include PSD review within the definition. 40 CFR §51.166(b)(1) is referenced to identify the PSD major source thresholds. The "source" identified in this definition is the EPA NSR source that is, in most cases, analogous to "account" as defined in 30 TAC §101.1.

A number of changes are proposed for the definition of major modification in renumbered paragraph (16). Language would be added to incorporate PSD review into the definition and references to facility would be removed for clarity. Language would be added to clearly identify the two criteria, a significant project emission increase and a significant net emission increase, that must be met for a modification to be considered major at a major source. The definition would be expanded to identify projects performed at facilities within a PAL as being major modifications if the modifications result in emission increases at facilities outside the PAL that are significant. This requirement ensures that if a PAL is not established for an entire process, any significant emission changes at non-PAL permitted facilities result in a federal permit review. Exceptions would be added to the definition for projects satisfying the requirements for a PAL except as previously noted and for various clean coal projects.

The commission proposes changes to the definition of net emission increase in renumbered paragraph (18) specifying that baseline actual emissions are to be used to determine emission increases and decreases, adjusting the language to accommodate for PSD applicability, and excluding emission increases at facilities under a PAL from being creditable. Under the proposed amendment, emission decreases cannot be counted in both an attainment demonstration and credit for nonattainment netting because this would be double credit for the same reduction. Emission decreases need only be enforceable as a practical matter rather than federally enforceable and the emission decrease cannot have been relied upon in the issuance of a PAL. Emission decreases may be creditable at these types of facilities, but they must go beyond what is required for the permit exclusion or designation. An emission reduction may be generated within a PAL, but the PAL must be lowered by that amount and the reduction must be real and enforceable in the same way as if the PAL were not in place.

The definition of offset ratio in renumbered paragraph (19) has been revised to incorporate the same limits relating to emission reductions that have been relied upon in the issuance of a PAL.

Proposed new paragraphs (20) - (24) have been added to incorporate new definitions from NSR reform related to PALs into the commission rules. These new paragraphs include definitions for: PAL; effective date; PAL major modification; PAL permit; and PAL pollutant.

The requirement to use baseline actual emissions has been added to renumbered paragraph (26), in the definition of project net.

Proposed new paragraphs (27) and (28) are added to define the new concepts of projected actual emissions and projects emissions increase. The project emissions increase may be determined in a different manner than the other emission increases that might be part of a netting exercise (used to determine the net emissions increase). For existing facilities, the emission increase at modified or affected facilities may be determined by using the projected actual emissions rate rather than the potential to emit for the facility. The projected emission rate must be developed using all relevant information including company projections and filings with regulatory authorities. The basis for the projection must be maintained by the source and would be submitted with any documentation required for a state NSR authorization to demonstrate that the project is not subject to federal review. The source would be required to demonstrate compliance with the projected emission rates for ten years if there was a change to the source's potential to emit or increase in capacity. Other affected facilities would be required to demonstrate compliance with projected rates for five years.

The actual to projected actual emissions rate test also allows the source to remove from the project increase any emissions increase that could have been accommodated in the baseline period. These must be unrelated to the project and may include demand growth. This federal rule change extends this concept that was developed for the electrical generation industry where

traditionally there had been a captured, or limited, customer base that was expected to grow at some rate unrelated to the available capacity of the generator. While this concept appears reasonable for the electric power industry as well as some sources with a limited customer base due to geography (such as gasoline terminals), it is not as useful for industries that have national or international markets served by multiple sources. In these cases, a demonstration would need to be made that the market conditions expected in the future are expected to be significantly different than any time in the past ten years and that if they had occurred in the baseline, they would have resulted in different operations. It is likely that this case would only be made in cases such as a prolonged outage at a major producer or a significant shift in market conditions. The determination of what could have been accommodated is limited to what could have been produced or handled and does not allow for changes in emissions that could have occurred due to a lower emission control device efficiency or the use of a fuel or solvent that might have resulted in greater emissions. The commission encourages comments on the interpretations related to the actual to projected actual emissions rate.

A definition for temporary clean coal technology demonstration project is proposed as new paragraph (31) to fully incorporate all of EPA's exclusions to what is considered a major modification under NSR reform.

Existing paragraphs are proposed to be renumbered to accommodate the proposed new definitions.

§116.121. Actual to Projected Actual and Emissions Exclusion Test for Emissions Increases.

This new section is proposed to require documentation associated with the projected actual emissions rates and records of compliance as identified in the federal rule. New subsection (a) would require a demonstration that federal NSR review does not apply be submitted with any permit application or registration. This demonstration must be documented by records that include a project description, the facilities affected, and a description of the applicability test. New subsection (b) would require monitoring of emissions that could increase as a result of the project if projected actual emissions are used to determine the project emission increase at a facility.

New subsection (c) would require electric utility steam generating units to provide the executive director documentation of emissions for each calendar year that records are required under the actual to projected actual test. New subsection (d) would require facilities other than electric generating units to submit a report to the executive director if annual emissions exceed the baseline actual emissions by a significant amount. Any other information that the owner or operator wishes to include in the report, such as an explanation as to why the emissions differ from the preconstruction projection, may be included as well. New subsection (e) would establish record retention periods.

The commission expects that projected actual emissions will be used extensively in registrations or claims for state NSR authorization where a maximum allowable emission rate is not specified in the rule. The use of a projected actual emissions rate for a modified source in a state NSR construction permit is expected to be limited because the state allowable emission rate would not generally be based on an activity level that would not be reached for more than ten years.

§116.150. New Major Source of Major Modification in Ozone Nonattainment Areas.

The proposed amendment to subsection (b) would delete language referring to a modified facility that will be a new major stationary source, which has caused confusion about what constitutes a major modification at an emission source that becomes major after the modification. A minor modification to a minor source that results in a major source does not qualify the modification as major. The commission will refer this determination to the definitions of major stationary source and major modification in §116.12. The commission would also substitute the term "facility" for "emission unit" in subsection (e)(1) for consistency in use of terms. The amendment to this section would also update the reference of the §116.12 title to Federal Permit Definitions.

§116.151. New Major Source or Major Modification in Nonattainment Area Other Than Ozone.

The proposed amendments to this section consist primarily of administrative and formatting changes. This section is proposed to be reformatted into subsections. The reference to November 15, 1992, would be deleted from subsection (a) because that date has passed and is not necessary for application of the section. The commission would also substitute the term "facility" for "emission unit" in subsection (c)(1) for consistency in use of terms. Subsections (b) and (c) are proposed to state when netting will be required.

§116.160. Prevention of Significant Deterioration Requirements.

The proposed amendment to this section would limit the incorporation by reference of definitions from 40 CFR §52.21 that are used to administer the PSD program, deleting most of the language in subsection (a) and all of the language in existing subsections (b) - (d).

Amended subsection (a) would delete the federal rule references and replace them with language that requires a proposed new major source or major modification in an attainment or unclassifiable area to meet the requirements of this section.

The proposed new subsection (b) would state that the *de minimis* threshold test (netting) is required for all modifications to existing major sources of federally regulated NSR pollutants, unless the proposed emissions increases associated with a project, without regard to decreases, are less than major modification thresholds for the pollutant.

Proposed new subsection (c) would incorporate by reference the following definitions and requirements located in 40 CFR §52.21: baseline concentrations, baseline dates, baseline areas, innovative control technology, federal land manager, terrain, Indian reservations/governing bodies, increments, ambient air ceilings, restrictions on area classifications, exclusions from increment consumption, redesignation, stack heights, exemptions, source impact analysis, air quality analysis, source information, additional impact analysis, sources impacting federal Class I areas, and innovative technology. Other definitions used for the PSD program or visibility in Class I areas program are currently in the commission's rules. The proposed amendment would also substitute the term "facility" for "emissions unit" in the definitions incorporated from the CFR because the commission's permitting actions are based on the individual facility or groups of facilities as defined in the commission's rules.

Existing subsection (d) is proposed to be relettered as subsection (e).

In addition to renaming Subchapter C, the commission also proposes new Division 1, Plant-Wide Applicability Limits.

The commission proposes the repeal of existing §116.180, Applicability; §116.181, Exclusions; §116.182, Application; and §116.183, Public Notice Requirements.

Proposed new §§116.180, 116.182, 116.184, 116.186, 116.188, 116.190, 116.192, 116.194, 116.196, and 116.198 would be in new Division 1.

§116.180. Applicability.

This proposed new section limits a PAL to one pollutant as required by the EPA and a site to one PAL permit in subsection (a). A PAL permit may contain separate PALs for several pollutants and will likely be consolidated with a state or federal construction or flexible permit at the site. Subsections (b) and (c) identify the administrative procedure for changes in ownership as well as responsibility for the PAL permit application.

§116.182. Plant-wide Applicability Limit Permit Application.

This proposed new section identifies the information necessary for a PAL permit application. Paragraph (1) requires the facilities that would be included in the PAL to be identified with their design capacities and potential to emit, and state NSR authorizations. Paragraph (2) requires that the baseline emissions for those facilities be identified so that they may be used to set the PAL. Paragraphs (3) and (5) require the applicant to identify how plans to monitor and use that information will be used to demonstrate compliance with the PAL. This information will serve as a starting point to develop PAL permit conditions.

New paragraphs (4) and (6) would require that BACT, on average, be implemented on all existing facilities to be included in the PAL over a period of time (typically less than five years). This is beyond what the EPA reform requires, but is consistent with the state flexible permit program. BACT also allows flexible permit holders to establish a PAL based on their past flexible permit review to allow for maximum flexibility at a plant site. The BACT requirement does not change the PAL, which is set using baseline emissions for the facilities. Paragraph (6) would require an implementation schedule for BACT if control technology requires upgrading.

§116.184. Application Review Schedule.

This proposed new section would require that PAL applications be reviewed on a schedule similar to other air permits as provided for in §116.114, Application Review Schedule.

§116.186. General and Special Conditions.

This proposed new section identifies the PAL as an annual emission rate for a federally regulated NSR pollutant covering all facilities identified in the application in subsection (a). Emissions from all facilities must be determined and compliance with the PAL must be documented monthly.

Subsection (b) identifies the general conditions applicable to every PAL. Paragraph (1) emphasizes that the PAL is not an authorization to construct but only sets an emission rate, below which federal NSR is not required. Paragraphs (2) and (3) identify sampling procedures and how a permit holder might obtain approval for an equivalent method. These requirements ensure consistency between various types of the commission's air permits.

Subsection (b)(4) would integrate common recordkeeping and reporting requirements for most other air permits with the much more extensive requirements identified in the EPA rule. Subparagraphs (A) and (B) of paragraph (4) require that the PAL permit application, and records associated with demonstrating cap compliance be maintained on site. Subsection (b)(4) includes the reporting requirements from the EPA rule. The semiannual and deviation reporting requirements in the federal rule are redundant with the current requirements in 30 TAC Chapter 122, Federal Operating Permits, and were not included in this proposed rule.

Subsection (b)(5) - (7) contains language common to air permits identifying what facilities are covered by the PAL, and requiring proper operation of control equipment and compliance with all rules. The PAL life of ten years is identified in paragraph (8). Paragraphs (9) and (10) incorporate requirements from the EPA rule requiring facility emissions to be reported as the potential to emit if monitoring data is not available, and that all data used to establish the PAL be re-validated at least every five years.

Subsection (c) identifies those EPA requirements that must be incorporated into the permit through special conditions. All facilities in a PAL must be monitored using one of the following four methods: mass balance; continuous emission monitoring system, continuous parameter monitoring system, or predictive emission monitoring system; or emission factors. An alternate approach may be approved by the executive director. Performance standards for each type of monitoring are specified. The special conditions will also require a BACT implementation schedule, if applicable.

§116.188. Plant-wide Applicability Limit.

This proposed new section identifies how the PAL is to be determined. Paragraph (1) allows the inclusion of emissions up to the significance level in addition to baseline emissions, but notes that adding these emission will affect any evaluation of emission increases at non-PAL sources. Paragraph (2) limits all facilities to the same baseline period for a given pollutant. Paragraph (3) addresses how to determine the PAL if there is a major modification involved. Modified sources contribute their allowable emission rates while existing unmodified sources contribute their baseline emission rates. Paragraph (4) would require that the PAL be reduced for any effective rules that have a future compliance date.

§116.190. Federal Nonattainment and Prevention of Significant Deterioration Review.

This proposed new section identifies that any changes that occur under a PAL are not considered federal modifications unless the PAL will be exceeded. Subsection (b) would restrict the generation of offsets from facilities under a PAL to cases where the PAL is lowered and such a decrease would be creditable without the PAL.

§116.192. Amendments and Alterations.

This proposed new section would allow increases to a PAL only through amendment in subsection (a). Subsection (a) requires that the new or modified facilities causing the need for the PAL increase be reviewed under the appropriate federal NSR program. Modified sources contribute their allowable emission rates to the new PAL while existing unmodified sources contribute their previous emission rates. The amended PAL is subject to public notice. The PAL increases are effective when the new and modified units become operational. Subsection (b) would limit reconsideration of controls associated with a PAL to amendments, but allow for changes in the implementation schedule to be requested through alteration. Subsection (c) identifies other changes that may be completed by alteration. These include changes to the special conditions that do not increase the emission cap, as well

as adding new facilities to the PAL to ensure adequate monitoring is in place.

§116.194. Public Notice and Comment.

This proposed new section requires that all PAL initial issuances, amendments, and renewals go to public notice with a possible notice and comment hearing as specified in 30 TAC Chapter 39, Subchapters H and K, Applicability and General Provisions; and Public Notice of Air Quality Applications.

§116.196. Renewal of a Plant-wide Applicability Limit Permit.

This proposed new section requires that a PAL renewal application be submitted within six to 18 months of the PAL expiration date in subsection (a). Submittal within that time period ensures that the PAL will not expire. Subsection (b) makes all PALs issued with flexible permits under past guidance subject to renewal under this proposed rule. Any PAL that has been in place for more than ten years must be submitted for renewal by December 31, 2006, or within the time specified, whichever is later.

Subsection (c) identifies the information necessary for a renewal application. This information includes: the proposed PAL level; identification of and justification for those qualified facilities to be included in the PAL; the potential to emit for qualified facilities and highest consecutive 12-month emissions in the last ten years for those that are not qualified; the associated state NSR authorizations; and any other information the executive director may require to determine at what level to renew the PAL.

Subsection (d) would require public notice for the renewed PAL, while subsection (e) includes the requirements for establishing the renewed PAL. These include summing the potential to emit for qualified facilities and the greatest rolling 12-month emissions for the facilities that are not qualified. The significance level for the pollutant may be added to that, but in no case may the new PAL level exceed the previous level. The significance level for a criteria pollutant is the netting trigger level found in the definition of major modification (Table 1) in §116.12.

§116.198. Expiration or Voidance.

This proposed new section requires that all BACT upgrades either be complete or be made enforceable in another manner prior to a PAL being voided. Once the controls have been implemented, a PAL may be dissolved at the permit holder's request. There is no need to allocate the PAL among facilities because there will be allowables associated with the state or federal authorizations.

§116.400. Applicability; §116.402. Exclusions; §116.404. Application; and §116.406. Public Notice Requirements.

These proposed new sections contain identical language to that found in the current §§116.180 - 116.183. These sections apply to the regulation of sources of hazardous air pollutants. The new sections are proposed as a reorganization of this chapter in order to accommodate new sections concerning NSR reform and do not contain substantive changes. The commission proposes administrative changes to be consistent with previously mentioned guidelines and to remove dates that are no longer applicable. The commission is not seeking comments on the substance of the sections, but rather, seeking only comments regarding the new organization structure, or non-substantive changes that would improve clarity of these sections.

The commission proposes the repeal of §116.410, Applicability.

§116.610. Applicability.

The proposed amendment to this section would remove references in subsection (a)(1) to specific paragraphs within 30 TAC §106.261 because the paragraph numbering of §106.261 has changed. The reference to 30 TAC §106.262 would be deleted because §106.261 refers to the use of §106.262, when applicable. The proposed change to subsection (b) would delete the exemption from NSR requirements for projects authorized under proposed new §116.617. As discussed earlier, this change is based on the June 24, 2005, decision that vacated EPA rules exempting incidental emission increases from NSR.

The commission proposes the repeal of §116.617, Standard Permits for Pollution Control Projects.

§116.617. State Pollution Control Project Standard Permit.

This proposed new section would incorporate existing requirements listed throughout the current rule, while clarifying the language in new subsection (a). Subsection (a) is organized into paragraphs (1) - (4), which include scope and applicability conditions currently found in existing §116.617. Proposed new subsection (a)(1) lists the three types of existing authorizations that may be modified by a state pollution control projects standard permit. Proposed new subsection (a)(2) clarifies the types of projects that may be authorized by a state pollution control projects standard permit, reorganized from the existing §116.617 requirements.

Proposed new subsection (a)(3) outlines the prohibitions for use of the state pollution control projects standard permit, clarifying the existing intent and requirements of current §116.617. Specifically, subsection (a)(3) does not allow production facilities to be replaced or modified in any way under this authorization since these types of changes need to be reviewed for BACT and potential harmful effects to health and property in accordance with Texas Health and Safety Code (THSC), Chapter 382, the Texas Clean Air Act (TCAA), §382.0518 and §116.610, unless the conditions of a standard permit or permit by rule are met. Proposed subsection (a)(3)(A) states that the standard permit will not be used to authorize complete replacement of an existing facility or reconstruction of a production facility.

Proposed new subsection (a)(3)(B) states that any collateral emission increase associated with the state pollution control projects standard permit must not cause or contribute to any exceedance of a national ambient air quality standard or cause adverse health effects. Proposed new subsection (a)(3)(C) prohibits the use of the state pollution control projects standard permit for the purpose of bringing a facility or group of facilities into compliance with an existing authorization or permit, which, by practice and intent, has never been allowed. Correcting such violations using the state pollution control projects standard permit would circumvent the potential evaluation of BACT and review of environmental and health effects that should have occurred during the original facility authorization review.

Proposed new subsection (a)(4) addresses how projects that have been registered under the existing §116.617 may continue to be authorized and subsequently meet the conditions of this proposed new §116.617. Projects authorized prior to the effective date of this rulemaking may defer the inclusion of emission increases or decreases resulting from the project until future netting calculations. Paragraph (4) allows currently authorized control projects to continue operation uninterrupted until the ten-year renewal anniversary of the original registration or until otherwise incorporated into a permit or standard permit. The current review period of 30 days would be extended to 45 days to allow

evaluation of netting, which would be required under the state pollution control projects standard permit.

Proposed new subsection (b) is organized into paragraphs (1) - (5) and includes the general requirements dispersed throughout current §116.617. Proposed new subsection (b)(1) requires compliance with the specific conditions of §116.604, Duration and Renewal of Registrations to Use Standard Permits; §116.605, Standard Permit Amendment and Revocation; §116.610, Applicability; §116.611, Registration to Use a Standard Permit; §116.614, Standard Permit Fees; and §116.615, General Conditions. While these requirements are not new, they are reorganized to emphasize and remind applicants of these conditions to ensure submittal of more complete registration information.

Proposed new subsection (b)(2) contains a new requirement specifying that construction or implementation of the state pollution control projects standard permit must begin within 180 days of receiving written acceptance of the registration from the executive director, and that changes to maximum allowable emission rates are effective only upon completion or implementation of the project. This requirement is added for three reasons: 1) questions regarding the start of construction deadlines and effective dates of new emissions limitations are frequently asked of the executive director; 2) setting a deadline consistent with §116.120, Voiding of Permits, ensures timely progress toward pollution control; and 3) this deadline keeps any emission changes within a contemporaneous netting window if federal permit applicability is of concern.

Proposed new subsection (b)(3) would exempt for state pollution control projects standard permits from the emission limits and distance requirements of permit by rule, §106.261, as referenced in §116.610(a)(1). Pollution control projects are considered environmentally beneficial so any emission increases associated with these projects do not require further authorization.

Proposed new subsection (b)(4) contains a new requirement that predictable maintenance, startup, and shutdown (MSS) emissions directly associated with the state pollution control projects standard permit be included in the maximum emissions represented in the registration application, consistent with the ongoing efforts of the commission to authorize all aspects of normal operations. The commission solicits comments regarding the calculation, reporting, and inclusion of MSS emissions within this standard permit.

Proposed new subsection (b)(5) contains the same requirements as in current §116.617(5) and (6) and limits emission increases to only those directly as a result of the pollution control project. Any incidental production capacity cannot be authorized by the state pollution control projects standard permit, but requires some other preconstruction authorization.

Proposed new subsection (c) includes the same requirements as in current §116.617(4), as well as two new requirements. Subsection (c) is organized into paragraphs (1) - (3) and pertains to requirements specific to replacement projects. Proposed subsection (c)(1) repeats the current §116.617(4) and allows replacement controls or techniques to be different than those currently authorized as long as the new project is at least as effective in controlling emissions. Proposed new subsection (c)(2) allows for increases in MSS emissions if these emissions were reviewed as part of the original authorization for the existing control equipment or technique, and if the increases are necessary to implement the replacement project. Proposed new subsection (c)(3) is a new requirement and is intended to clarify that the applicable testing and recordkeeping requirements associated with the currently permitted control or technique apply to the replacement to ensure continuing compliance with associated emission limits. If the control or technique is substantially different than an existing control or technique, applicants may also propose equivalent alternatives for review by the executive director.

Proposed new subsection (d) clarifies the requirements of current §116.617(4)(C), adds varying fees for different project types, and clearly specifies documentation required in a state pollution control projects standard permit registration application. Proposed new subsection (d)(1) includes existing language found in current §116.617(4)(C), but changes the required fees based on whether the project or change in representation results in an increase in the maximum authorized emission rates. Changes to fee requirements are proposed to encourage the installation and use of pollution control projects, especially where there is no increase in emissions or the changes require minimal review. This subsection also describes when a registration should be submitted and when construction or implementation may begin. Various deadlines are proposed to provide flexibility and encourage the use of pollution control projects. Regardless of these deadlines, all projects must meet all requirements of the state pollution control projects standard permit and the responsibility to do so remains with the applicant at all times. Proposed new subsection (d)(2) clarifies current registration requirements. These include a process and project description, a list of affected permits and emission points, calculated emission rates, the basis of those emission rates, proposed monitoring and recordkeeping, and the proposed method for incorporating the state pollution control projects standard permit into existing permits.

Proposed new subsection (e) incorporates requirements found in §116.615, General Conditions, but expands, clarifies, and focuses those requirements specifically for the state pollution control projects standard permit. Proposed new subsection (e)(1) emphasizes that a project should be constructed and operated in accordance with good engineering practices to minimize emissions. Proposed new subsection (e)(2) specifically requires copies of documentation to be kept demonstrating compliance with this standard permit.

Proposed new subsection (f) provides clarification of the procedures for, and under what conditions, a state pollution control projects standard permit should be incorporated or administratively referenced into a facility's NSR authorization. Proposed new subsection (f)(1) applies to facilities authorized by a permit or standard permit. Proposed new subsection (f)(1) applies to those state pollution control projects standard permits that authorize new facilities or changes in method of control and would require incorporation upon the next amendment or renewal of the facility's authorization. Although incorporation is not a new requirement, subsection (f)(1) clarifies that the project will have an impacts review, no evaluation of BACT is required, and that the increases will not trigger public notice.

Proposed new subsection (f)(2) applies to facilities authorized under a permit by rule and requires that all increases in previously authorized emissions, new facilities, or changes in method of control or technique authorized by this standard permit comply with §106.4, except for the emission limitations in §106.4(a)(1) and §106.8.

§116.1200. Applicability.

This proposed new section contains the identical language found in existing §116.410 and allows facility owners or operators to apply to the commission for a suspension of permit conditions for the addition, repair, or replacement of control equipment in the event of a catastrophe. This new section is proposed in order to reorganize this chapter to accommodate new sections associated with NSR reform and does not contain substantive changes. The commission is not seeking comment on the substance of the section, but rather, seeking only comments regarding the new organization structure or non-substantive changes that would improve the clarity of this section.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Nina Chamness, Analyst, Strategic Planning and Grants Management Section, determined that for the first five-year period the proposed rules are in effect, no fiscal implications are anticipated for the agency or other units of state or local governments as a result of administration or enforcement of the proposed rules. The proposed rules would implement EPA regulations concerning NSR reform.

The proposed rules seek to implement NSR reform by repealing, amending, and proposing new sections of this chapter. EPA received feedback that needed improvements to facilities have not been undertaken because of the cost of federal NSR evaluations. EPA indicated that the intent of the reform of the process is to limit the instances of modification that would, under current rules, trigger federal NSR. Fewer planned facility modifications would be subject to emission accounting exercises where increases and decreases of emissions in a certain time period are totaled to determine if a facility modification is classified as a major modification and, therefore, subject to federal NSR.

Reform of federal NSR offers options by which facility owners or operators can avoid the triggering mechanisms of federal NSR. The reforms that these proposed rules would implement are: state pollution control and prevention projects, PALs, and changes in the calculation of emission increases and actual emission baselines. The use of these reforms is not mandatory and owners or operators of modified facilities would implement these reforms on a voluntary basis.

PUBLIC BENEFITS AND COSTS

Ms. Chamness also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be consistency between federal and state regulations concerning NSR. Owners or operators making facility modifications would not incur the cost of procedures, upgrades to emission equipment, or the purchase of pollution credits that could be required under federal NSR.

Industry would save costs by reducing the number of facility modifications that would be subject to federal NSR. Fewer emission increases that result from facility modification would have to be offset by emission reductions, upgrade of emission controls, or by the purchase of emission credits or allowances. The exact amount of cost savings at this time is not known due to the variety of methods and operating systems employed by different entities in industry. However, savings could be as much as $40,000 per ton of pollutant, the current market price of an emission credit, which an entity would have been required to purchase under NSR if emission calculations showed planned modifications would increase emissions above the allowable amount.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses. A small business is defined as having fewer than 100 employees or less than $1 million in annual gross receipts. A micro-business is defined as having no more than 20 employees. Typically, small or micro-businesses do not participate in the type of industrial activities to which NSR, and therefore, NSR reform would apply.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225 and determined that the proposed rulemaking does not meet the definition of a "major environmental rule." Furthermore, it does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). A "major environmental rule" means a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed rulemaking would revise the rules regarding federal permitting applicability, including adding additional options under federal air quality permitting applicability and plant-wide applicability limit options. The proposed rulemaking revises the existing pollution control projects standard permit. In addition, the proposed rulemaking would modify and add definitions, and change some general formatting of this chapter. The proposed rules will not adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

In addition, Texas Government Code, §2001.0225, only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. The proposed rules do not exceed a standard set by federal law or exceed an express requirement of state law. The proposed rules do not incorporate federal NSR reform verbatim but provide for a different, yet equivalent, approach for implementation that is best suited to benefit Texas' industry and environment. This equivalence will also be demonstrated to EPA for these rules to be included in the SIP. There is no contract or delegation agreement that covers the topic that is the subject of this rulemaking. Finally, this rulemaking was not developed solely under the general powers of the agency, but is authorized by specific sections of the THSC and the Texas Water Code (TWC) that are cited in the STATUTORY AUTHORITY section of this preamble. Therefore, this rulemaking is not subject to the regulatory analysis provisions of Texas Government

Code, §2001.0225(b), because the proposed rules do not meet any of the four applicability requirements.

The commission invites public comment regarding the draft regulatory impact analysis determination during the public comment period.

TAKINGS IMPACT ASSESSMENT

The commission completed a takings impact analysis for the proposed rules, including adding additional options under federal air quality permitting applicability and plant-wide applicability limit options. The proposed rulemaking revises the existing pollution control projects standard permit. The specific purpose of this rulemaking is to revise the rules regarding federal permitting applicability. In addition, the proposed rulemaking would modify and add definitions, and change some general formatting of this chapter. Promulgation and enforcement of the proposed rules would be neither a statutory nor a constitutional taking because they do not affect private real property. Specifically, the proposed rules do not affect private property in a manner which restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Therefore, the proposed rules do not constitute a takings under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that this rulemaking action relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 *et seq*.), and the commission's rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the CMP. As required by §281.45(a)(3) and 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Coastal Management Program, the commission's rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed this action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and determined that the action is consistent with the applicable CMP goals and policies. The CMP goal applicable to this rulemaking action is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(l)). No new sources of air contaminants will be authorized and the proposed revisions will maintain the same level of emissions control as the existing rules. The CMP policy applicable to this rulemaking action is the policy that the commission's rules comply with federal regulations in 40 CFR, to protect and enhance air quality in the coastal areas (31 TAC §501.14(q)). This rulemaking action complies with 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans. Therefore, in accordance with 31 TAC §505.22(e), the commission affirms that this rulemaking action is consistent with CMP goals and policies.

The commission solicits comments on the consistency of the proposed rulemaking with the CMP during the public comment period.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

The new and amended sections in this proposal are applicable requirements under Chapter 122. Upon the effective date of this rulemaking, owners or operators subject to the Federal Operating Permit Program that modify any NSR authorized sources at their sites will be subject to the amended requirements of these sections.

ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in Austin on October 27, 2005, at 2:00 p.m. in Building B, Room 201A, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes before the hearing and will answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact Joyce Spencer, Office of Legal Services, at (512) 239-5017. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to Joyce Spencer, MC 205, Texas Register Team, Office of Legal Services, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Comments must be received by 5:00 p.m., October 31, 2005, and should reference Rule Project Number 2005-010-116-PR. Copies of the proposed rules can be obtained from the commission's Web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html*. For further information, please contact Beecher Cameron, Air Permits Division, at (512) 239-1495 or Kurt Kind, Air Permits Division, at (512) 239-1337.

SUBCHAPTER A. DEFINITIONS

30 TAC §116.12

STATUTORY AUTHORITY

The amendment is proposed under TWC, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The amendment is also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue permits and adopt rules necessary for permits issued under THSC, Chapter 382; §382.0512, concerning Modification of Existing Facility, which establishes a modification and its limits; §382.0518, concerning Preconstruction Permit, which requires that a permit be obtained from the commission prior to new construction or modification of an existing facility; and Federal Clean Air Act (FCAA), 42 United States Code (USC), §§7401 *et seq.*, which requires permits for construction and operation of new or modified major stationary sources.

The proposed amendment implements THSC, §§382.002, 382.011, 382.012, 382.051, 382.0512, and 382.0518; and FCAA, 42 USC, §§7401 *et seq*.

§116.12. Federal Permit [~~Nonattainment Review~~] Definitions.

Unless specifically defined in the Texas Clean Air Act (TCAA) or in the rules of the commission, the terms used by the commission have the meanings commonly ascribed to them in the field of air pollution control. The terms in this section are applicable to permit review for major source construction and major source modification in nonattainment areas. In addition to the terms that are defined by the TCAA, and in §101.1 of this title (relating to Definitions), the following words and terms, when used in Chapter 116, Subchapter B, Divisions 5 and 6 of this title (relating to Nonattainment Review and Prevention of Significant Deterioration Review); and Chapter 116, Subchapter C, Division 1 of this title (relating to Plant-Wide Applicability Limits) [~~§116.150 and §116.151 of this title (relating to Nonattainment Review)~~], have the following meanings, unless the context clearly indicates otherwise.

(1) Actual emissions--Actual emissions as of a particular date are equal to the average rate, in tons per year, at which the unit actually emitted the pollutant during a two-year period that precedes the particular date and that is representative of normal source operation , except that this definition shall not apply for calculating whether a significant emissions increase has occurred, or for establishing a plant-wide applicability limit. Instead, paragraph (3) of this section shall apply for this purpose. The executive director shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period. The executive director may presume that the source-specific allowable emissions for the unit are equivalent to the actual emissions, e.g., when the allowable limit is reflective of actual emissions. For any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

(2) (No change.)

(3) Baseline actual emissions--The average rate of actual emissions, in tons per year, of a federally regulated new source review pollutant.

(A) For any existing electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the five-year period immediately preceding when the owner or operator begins actual construction of the project. The reviewing authority shall allow the use of a different time period upon a determination that it is more representative of normal source operation.

(B) For an existing facility (other than an electric utility steam generating unit), baseline actual emissions means the average rate, in tons per year, at which the facility actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the ten-year period immediately preceding either the date the owner or operator begins actual construction of the project, or the date a complete permit application is received for a permit. The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply with the exception of those required under 40 Code of Federal Regulations, Part 63, had such major stationary source been required to comply with such limitations during the consecutive 24-month period.

(C) For a new facility, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and for all other purposes during the first two years following initial operation, shall equal the unit's potential to emit.

(D) The average actual rate shall be adjusted downward to exclude any non-compliant emissions that occurred during the consecutive 24-month period. For each regulated new source review pollutant, when a project involves multiple facilities, only one consecutive 24-month period must be used to determine the baseline actual emissions for the facilities being changed. A different consecutive 24-month period can be used for each regulated new source review pollutant. The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount. Baseline emissions cannot occur prior to November 15, 1990.

(E) The average actual emissions rate shall include fugitive emissions to the extent quantifiable. Until March 1, 2016, emissions previously demonstrated as emissions events or historically exempted under Chapter 101 of this title (relating to General Air Quality Rules) may be included to the extent that they have been authorized, or are being authorized, in a permit action under Chapter 106 of this title (relating to Permits by Rule) and this chapter.

(4) [~~(3)~~] Begin actual construction--In general, initiation of physical on-site construction activities on an emissions unit that are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operation, this term refers to those on-site activities other than preparatory activities that mark the initiation of the change.

(5) [~~(4)~~] Building, structure, facility, or installation--All of the pollutant-emitting activities that belong to the same industrial grouping, are located in one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant-emitting activities are considered to be part of the same industrial grouping if they belong to the same "major group" (i.e., that have the same two-digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 supplement.

(6) Clean coal technology--Any technology, including technologies applied at the precombustion, combustion, or post-combustion stage, at a new or existing facility that will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, or process steam that was not in widespread use as of November 15, 1990.

(7) Clean coal technology demonstration project--A project using funds appropriated under the heading "Department of Energy-Clean Coal Technology," up to a total amount of $2.5 billion for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the United States Environmental Protection Agency. The federal contribution for a qualifying project shall be at least 20% of the total cost of the demonstration project.

(8) [~~(5)~~] Commence--As applied to construction of a major stationary source or major modification, means that the owner or operator has all necessary preconstruction approvals or permits and either has:

(A) begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

(B) entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

(9) [~~(6)~~] Construction--Any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) that would result in a change in actual emissions.

(10) [~~(7)~~] Contemporaneous period--For major sources the period between:

(A) the date that the increase from the particular change occurs; and

(B) 60 months prior to the date that construction on the particular change commences.

(11) [~~(8)~~] *De minimis* threshold test (netting)--A method of determining if a proposed emission increase will trigger nonattainment or prevention of significant deterioration review. The summation of the proposed project emission increase in tons per year with all other creditable source emission increases and decreases during the contemporaneous period is compared to the major modification threshold [~~MAJOR MODIFICATION column of Table I located in the definition of major modification in this section~~] for that pollutant [~~specific nonattainment area~~]. If the major modification level is exceeded, then prevention of significant deterioration and/or nonattainment review is required.

(12) Electric utility steam generating unit--Any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 megawatts electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

(13) Federally regulated new source review pollutant--As defined in subparagraphs (A) - (D) of this paragraph:

(A) any pollutant for which a national ambient air quality standard has been promulgated and any constituents or precursors for such pollutants identified by the United States Environmental Protection Agency;

(B) any pollutant that is subject to any standard promulgated under Federal Clean Air Act (FCAA), §111;

(C) any Class I or II substance subject to a standard promulgated under or established by FCAA, Title VI; or

(D) any pollutant that otherwise is subject to regulation under the FCAA; except that any or all hazardous air pollutants either listed in FCAA, §112 or added to the list under FCAA, §112(b)(2), which have not been delisted under FCAA, §112(b)(3), are not regulated new source review pollutants unless the listed hazardous air pollutant is also regulated as a constituent or precursor of a general pollutant listed under FCAA, §108.

(14) [~~(9)~~] Lowest achievable emission rate--For any emitting facility, that rate of emissions of a contaminant that does not exceed the amount allowable under applicable new source performance standards promulgated by the United States Environmental Protection Agency under 42 United States Code, §7411, and that reflects the following:

(A) the most stringent emission limitation that is contained in the rules and regulations of any approved state implementation plan for a specific class or category of facility, unless the owner or operator of the proposed facility demonstrates that such limitations are not achievable; or

(B) the most stringent emission limitation that is achieved in practice by a specific class or category of facilities, whichever is more stringent.

(15) [~~(10)~~] Major [~~facility/~~] stationary source--Any [~~facility/~~] stationary source that emits, or has the potential to emit, a threshold quantity of emissions [~~the amount specified in the MAJOR SOURCE column of Table I located in the definition of major modification in this section~~] or more of any air contaminant (including volatile organic compounds (VOCs) for which a national ambient air quality standard has been issued. The major source thresholds are provided in Table I of this section for nonattainment pollutants and the major source thresholds for prevention of significant deterioration pollutants are identified in 40 Code of Federal Regulations §51.166(b)(1). A source that is major for one prevention of significant deterioration pollutant is considered major for all prevention of significant deterioration pollutants. Any physical change that would occur at a stationary source not qualifying as a major stationary source will make the source major [~~in Table I of this section~~], if the change would constitute a major stationary source by itself. A major stationary source that is major for VOCs or nitrogen oxides is considered to be major for ozone. The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this definition whether it is a major stationary source, unless the source belongs to one of the categories of stationary sources listed in 40 Code of Federal Regulations §51.165(a)(1)(iv)(C).

(16) [~~(11)~~] Major modification--As follows.

(A) Any physical change in, or change in the method of operation of a major [~~facility/~~] stationary source that causes a significant project emissions increase and a significant net emissions increase for any federally regulated new source review pollutant [~~air contaminant for which a national ambient air quality standard (NAAQS) has been issued~~]. At a [~~facility/~~] stationary source that is not major prior to the increase, the increase by itself must equal or exceed that specified for a major source [~~in the MAJOR SOURCE column of Table I of this section~~]. At an existing major [~~facility/~~] stationary source, the increase must equal or exceed that specified for a major modification to be significant. The major source and major modification thresholds are provided in Table I of this section for nonattainment pollutants. The major source and significant thresholds for prevention of significant deterioration pollutants are identified in 40 Code of Federal Regulations §51.166(b)(1) and (23), respectively. Any physical change in, or change in the method of operation of a facility in a plant-wide applicability limit (PAL) that causes a significant project emissions increase for any federally regulated new source review pollutant at non-PAL facilities is a major modification. [~~in the MAJOR MODIFICATION column of Table I.~~]
Figure: 30 TAC §116.12(16)(A)
[~~Figure: 30 TAC §116.12(11)(A)~~]

(B) A physical change or change in the method of operation shall not include:

(i) routine maintenance, repair, and replacement;

(ii) use of an alternative fuel or raw material by reason of an order under the Energy Supply and Environmental Coordination Act of 1974, §2(a) and (b) (or any superseding legislation) or by reason of a natural gas curtailment plan under the Federal Power Act;

(iii) use of an alternative fuel by reason of an order or rule of 42 United States Code, §7425;

(iv) use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(v) use of an alternative fuel or raw material by a stationary source that the source was capable of accommodating before December 21, 1976 (unless such change would be prohibited under any federally enforceable permit condition established after December 21, 1976) or the source is approved to use under any permit issued under regulations approved under this chapter;

(vi) an increase in the hours of operation or in the production rate (unless the change is prohibited under any federally enforceable permit condition which was established after December 21, 1976); [~~or~~]

(vii) any change in ownership at a stationary source; [~~.~~]

(viii) any change in emissions of a pollutant at a site that occurs under an existing plant-wide applicability limit unless the project emission increases at non-PAL facilities are significant;

(ix) the installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with the state implementation plan and other requirements necessary to attain and maintain the national ambient air quality standard during the project and after it is terminated;

(x) for prevention of significant deterioration review only, the installation or operation of a permanent clean coal technology demonstration project that constitutes re-powering, provided that the project does not result in an increase in the potential to emit of any regulated pollutant emitted by the unit. This exemption shall apply on a pollutant-by-pollutant basis; or

(xi) for prevention of significant deterioration review only, the reactivation of a clean coal-fired electric utility steam generating unit.

(17) [~~(12)~~] Necessary preconstruction approvals or permits--Those permits or approvals required under federal air quality control laws and regulations and those air quality control laws and regulations that are part of the applicable state implementation plan.

(18) [~~(13)~~] Net emissions increase--The amount by which the sum of the following exceeds zero: the total increase in actual emissions from a particular physical change or change in the method of operation at a stationary source, plus any sourcewide creditable contemporaneous emission increases, minus any sourcewide creditable contemporaneous emission decreases. Baseline actual emissions shall be used to determine emissions increases and decreases.

(A) An increase or decrease in [~~actual~~] emissions is creditable only if both of the following conditions are met:

(i) it occurs during the contemporaneous period; and

(ii) the executive director has not relied on it in issuing a federal permit of same type [~~nonattainment permit~~] for the source and that permit is in effect [~~(under regulations approved during which the permit is in effect)~~] when the increase in [~~actual~~] emissions from the particular change occurs.

(B) An increase in [~~actual~~] emissions is creditable if it is the result of a physical change in, or change in the method of operation of a stationary source only to the extent that the new level of [~~actual~~] emissions exceeds the baseline actual emission rate. Emission increases at facilities under a plant-wide applicability limit are not creditable. [~~old level.~~]

(C) A decrease in [~~actual~~] emissions is creditable only to the extent that all of the following conditions are met:

(i) the baseline actual emission rate [~~old level of actual emissions or the old level of allowable emissions, whichever is lower,~~] exceeds the new level of [~~actual~~] emissions;

(ii) it is enforceable as a practical matter [~~federally enforceable~~] at and after the time that actual construction on the particular change begins;

(iii) the reviewing authority has not relied on it in issuing a prevention of significant deterioration, [~~or a~~] nonattainment , or plant-wide applicability limit permit; [~~permit, or the state has not relied on the decrease to demonstrate attainment or reasonable further progress; and~~]

(iv) the decrease has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change ; and [~~.~~]

(v) in the case of nonattainment applicability analysis only, the state has not relied on the decrease to demonstrate attainment or reasonable further progress.

(D) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

(19) [~~(14)~~] Offset ratio--For the purpose of satisfying the emissions offset reduction requirements of the 42 United States Code, §7503(a)(1)(A), the emissions offset ratio is the ratio of total actual reductions of emissions to total [~~allowable~~] emissions increases of such pollutants. The minimum offset ratios are included in Table I of this section under the definition of major modification [~~of this section~~]. In order for a reduction to qualify as an offset, it must be certified as an emission credit under Chapter 101, Subchapter H, Division 1 or 4 of this title (relating to Emission Credit Banking or Trading; or Discrete Emission Credit Banking and Trading), except as provided for in §116.170(b) of this title (relating to Applicability of Emission Reductions as Offsets). The reduction must not have been relied on in the issuance of a previous nonattainment, [~~or~~] prevention of significant deterioration, or plant-wide applicability limit permit.

(20) Plant-wide applicability limit--An emission limitation expressed, in tons per year, for a pollutant at a major stationary source, that is enforceable as a practical matter and established in a plant-wide applicability limit permit under §116.186 of this title (relating to General and Special Conditions).

(21) Plant-wide applicability limit effective date--The date of issuance of the plant-wide applicability limit permit. The plant-wide applicability limit effective date for a plant-wide applicability limit established in an existing flexible permit is the date that the flexible permit was issued.

(22) Plant-wide applicability limit major modification--Any physical change in, or change in the method of operation of the plant-wide applicability limit source that causes it to emit the plant-wide applicability limit pollutant at a level equal to or greater than the plant-wide applicability limit.

(23) Plant-wide applicability limit permit--The state or federal new source review permit that establishes the plant-wide applicability limit.

(24) Plant-wide applicability limit pollutant--The pollutant for which a plant-wide applicability limit is established.

(25) [~~(15)~~] Potential to emit--The maximum capacity of a [~~facility/~~] stationary source to emit a pollutant under its physical and operational design. Any physical or enforceable operational limitation on the capacity of the [~~facility/~~] stationary source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, may be treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions, as defined in 40 Code of Federal Regulations §51.165(a)(1)(viii), do not count in determining the potential to emit for a stationary source.

(26) [~~(16)~~] Project net--The sum of the following: the total proposed increase in emissions resulting from a physical change or change in the method of operation at a stationary source, minus any sourcewide creditable [~~actual~~] emission decreases proposed at the source between the date of application for the modification and the date the resultant modification begins emitting. Baseline actual emissions shall be used to determine emissions increases and decreases. Increases and decreases must meet the creditability criteria listed under the definition of net emissions increase in this section.

(27) Projected actual emissions--The maximum annual rate, in tons per year, at which an existing facility is projected to emit a federally regulated new source review pollutant in any rolling 12-month period during the five years following the date the facility resumes regular operation after the project, or in any one of the ten years following that date, if the project involves increasing the facility's design capacity or its potential to emit that federally regulated new source review pollutant. In determining the projected actual emissions, the owner or operator of the major stationary source shall include fugitive emissions to the extent quantifiable and shall consider all relevant information, including, but not limited to, historical operational data, the company's own representations, the company's expected business activity and the company's highest projections of business activity, the company's filings with the state or federal regulatory authorities, and compliance plans under the approved state implementation plan.

(28) Project emissions increase--The sum of emissions increases for each modified or affected facility determined using the following methods:

(A) for existing facilities, the difference between the projected actual emissions and the baseline actual emissions. In calculating any increase in emissions that results from the project, that portion of the facility's emissions following the project that the facility could have accommodated during the consecutive 24-month period used to establish the baseline actual emissions and that are also unrelated to the particular project, including any increased utilization due to product demand growth may be excluded from the project emission increase. The potential to emit from the facility following completion of the project may be used in lieu of the projected actual emission rate; and

(B) for new facilities, the difference between the potential to emit from the facility following completion of the project and the baseline actual emissions.

(29) [~~(17)~~] Secondary emissions--Emissions that would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the source or modification itself. Secondary emissions must be specific, well-defined, quantifiable, and impact the same general area as the stationary source or modification that causes the secondary emissions. Secondary emissions include emissions from any off-site support facility that would not be constructed or increase its emissions, except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions that come directly from a mobile source such as emissions from the tail pipe of a motor vehicle, from a train, or from a vessel.

(30) [~~(18)~~] Stationary source--Any building, structure, facility, or installation that emits or may emit any air pollutant subject to regulation under 42 United States Code, §§7401 *et seq*.

(31) Temporary clean coal technology demonstration project--A clean coal technology demonstration project that is operated for a period of five years or less, and that complies with the state implementation plan and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Stephanie Bergeron Perdue
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Texas Commission on Environmental Quality
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For further information, please call: (512) 239-5017

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SUBCHAPTER B. NEW SOURCE REVIEW PERMITS

DIVISION 1. PERMIT APPLICATION

30 TAC §116.121

STATUTORY AUTHORITY

The new section is proposed under TWC, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The new section is also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue permits and adopt rules necessary for permits issued under THSC, Chapter 382; §382.0512, concerning Modification of Existing Facility, which establishes a modification and its limits; §382.0518, concerning Preconstruction Permit,

which requires that a permit be obtained from the commission prior to new construction or modification of an existing facility; and FCAA, 42 USC, §§7401 *et seq.*, which requires permits for construction and operation of new or modified major stationary sources.

The proposed new section implements THSC, §§382.002, 382.011, 382.012, 382.051, 382.0512, and 382.0518; and FCAA, 42 United States Code, §§7401 *et seq*.

§116.121. Actual to Projected Actual and Emissions Exclusion Test for Emissions Increases.

(a) If projected actual emissions are used or emissions are excluded from the emission increase resulting from the project, the owner or operator shall document and maintain a record of the following information before beginning construction, and this information will be provided as part of the notification, certification, registration, or application submitted to the executive director to claim or apply for state new source review authorization for the project. If the emissions unit is an existing electric utility steam generating unit, the owner or operator shall provide a copy of this information to the executive director before beginning actual construction:

(1) a description of the project;

(2) identification of the facilities of which emissions of a federally regulated new source review pollutant could be affected by the project; and

(3) a description of the applicability test used to determine that the project is not a major modification for any pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded from the project emissions increase and an explanation for why such amount was excluded, and any netting calculations, if applicable.

(b) If projected actual emissions are used to determine the project emission increase at a facility, the owner or operator shall monitor the emissions of any regulated new source review pollutant that could increase as a result of the project at that facility and calculate and maintain a record of the annual emissions from that facility, in tons per year, on a calendar year basis for:

(1) a period of five years following resumption of regular operations after the change; or

(2) a period of ten years following resumption of regular operations after the change if the project increases the design capacity or potential to emit of that regulated new source review pollutant at that facility.

(c) If the facility is an electric utility steam generating unit, the owner or operator shall submit a report to the executive director within 60 days after the end of each year of which records must be maintained setting out the unit's annual emissions during the calendar year that preceded submission of the report.

(d) If the facility is not an electric utility steam generating unit, the owner or operator shall submit a report to the executive director if the annual emissions from the project exceed the baseline actual emissions by a significant amount for that pollutant, and the emissions exceed the preconstruction projection for any facility. The report shall be submitted to the executive director within 60 days after the end of such year. The report shall contain:

(1) the name, address, and telephone number of the major stationary source; and

(2) the calculated actual annual emissions.

(e) The owner or operator of the facility shall make the required information maintained to document projected actual emissions and any emissions excluded from the project emission increase available for review upon request for inspection by the executive director, local air pollution control program, and the general public.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 5. NONATTAINMENT REVIEW PERMITS

30 TAC §116.150, §116.151

STATUTORY AUTHORITY

The amendments are proposed under TWC, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The amendments are also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue permits and adopt rules necessary for permits issued under THSC, Chapter 382; §382.0512, concerning Modification of Existing Facility, which establishes a modification and its limits; §382.0518, concerning Preconstruction Permit, which requires that a permit be obtained from the commission prior to new construction or modification of an existing facility; and FCAA, 42 USC, §§7401 *et seq.*, which requires permits for construction and operation of new or modified major stationary sources.

The proposed amendments implement THSC, §§382.002, 382.011, 382.012, 382.051, 382.0512, and 382.0518; and FCAA, 42 USC, §§7401 *et seq*.

§116.150. New Major Source or Major Modification in Ozone Nonattainment Areas.

(a) (No change.)

(b) The owner or operator of a proposed new [~~or modified facility that will be a new~~] major stationary source , as defined in §116.12 of this title (relating to Federal Permit Definitions) of volatile organic compound (VOC) emissions or nitrogen oxides (NO_x) emissions, or the

owner or operator of an existing [~~major~~] stationary source of VOC or NO_x emissions that will undergo a major modification, as defined in §116.12 of this title with respect to VOC or NO_x, shall meet the requirements of subsection (e)(1) - (4) of this section, except as provided in subsection (f) of this section. Table I, located in the definition of major modification [~~modifications~~] in §116.12 of this title, [~~(relating to Nonattainment Review Definitions)~~] specifies the various classifications of nonattainment along with the associated emission levels that designate a major stationary source or major modification for those classifications.

(c) - (d) (No change.)

(e) In applying the *de minimis* threshold test, if the net emissions increases, aggregated over the contemporaneous period, are greater than the major modification levels stated in Table I located in the definition of major modification in §116.12 of this title, then the following requirements apply.

(1) The proposed facility shall comply with the lowest achievable emission rate (LAER) as defined in §116.12 of this title for the nonattainment pollutants for which the facility is a new major source or major modification except as provided in paragraph (3)(B) of this subsection and except for existing major stationary sources that have a potential to emit (PTE) of less than 100 tpy of the applicable nonattainment pollutant. For these sources, best available control technology (BACT) can be substituted for LAER. LAER shall otherwise be applied to each new facility [~~emission unit~~] and to each existing facility [~~emission unit~~] at which the net emissions increase will occur as a result of a physical change or change in method of operation of the unit.

(2) - (4) (No change.)

(f) (No change.)

§116.151. New Major Source or Major Modification in Nonattainment Area Other Than Ozone.

(a) This section applies to [~~administratively complete~~] applications [~~submitted on or after November 15, 1992,~~] for new construction or modification of facilities located in a designated nonattainment area for an air contaminant other than ozone. The owner or operator of a proposed new or modified facility that [~~which~~] will be a new major stationary source for that nonattainment air contaminant, or the owner or operator of an existing major stationary source that will undergo a major modification with respect to that nonattainment air contaminant, shall meet the additional requirements of subsection (c) [~~paragraphs~~] (1) - (4) of this section. Table I of §116.12 of this title (relating to Federal Permit [~~Nonattainment Review~~] Definitions) specifies the various classifications of nonattainment along with the associated emission levels that [~~which~~] designate a major stationary source [~~or major modification for those classifications~~].

(b) The *de minimis* threshold test (netting) is required for all modifications to existing major sources of federally regulated new source review pollutants, unless the proposed emissions increases associated with a project, without regard to decreases, are less than the major modification threshold for the pollutant identified in Table I of §116.12 of this title.

(c) In applying the *de minimis* threshold test, if the net emissions increases, aggregated over the contemporaneous period, are greater than the major modification levels stated in Table I of §116.12 of this title, the following requirements apply.

(1) The proposed facility shall comply with the lowest achievable emission rate (LAER) as defined in §116.12 of this title for the nonattainment pollutants for which the facility is a new major source or major modification. LAER shall be applied to each new facility [~~emission unit~~] and to each existing facility [~~emission unit~~] at which the net emissions increase will occur as a result of a physical change or change in method of operation of the unit.

(2) All major stationary sources owned or operated by the applicant (or by any person controlling, controlled by, or under common control with the applicant) in the state shall be in compliance or on a schedule for compliance with all applicable state and federal emission limits and standards.

(3) At the time the new or modified facility or facilities commence operation, the emission increases from the new or modified facility or facilities shall be offset. The proposed facility shall use the offset ratio for the appropriate nonattainment classification as defined in §116.12 of this title and shown in Table I of §116.12 of this title.

(4) In accordance with the Federal Clean Air Act, the permit application shall contain an analysis of alternative sites, sizes, production processes, and control techniques for the proposed source. The analysis shall demonstrate that the benefits of the proposed location and source configuration significantly outweigh the environmental and social costs of that location.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality
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DIVISION 6. PREVENTION OF SIGNIFICANT DETERIORATION REVIEW

30 TAC §116.160

STATUTORY AUTHORITY

The amendment is proposed under TWC, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The amendment is also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue permits and adopt rules necessary for permits issued under THSC, Chapter 382; §382.0512, concerning Modification of Existing Facility, which establishes a modification and its limits; §382.0518, concerning Preconstruction Permit, which requires that a permit be obtained from the commission

prior to new construction or modification of an existing facility; and FCAA, 42 USC, §§7401 *et seq.*, which requires permits for construction and operation of new or modified major stationary sources.

The proposed amendment implements THSC, §§382.002, 382.011, 382.012, 382.051, 382.0512, and 382.0518; and FCAA, 42 USC, §§7401 *et seq*.

§116.160. Prevention of Significant Deterioration Requirements.

(a) Each proposed new major source or major modification in an attainment or unclassifiable area shall comply with the requirements of this section. The owner or operator of a proposed new or modified facility that will be a new major stationary source for the prevention of significant deterioration air contaminant shall meet the additional requirements of subsection (c)(1) - (4) of this section. [~~Prevention of Significant Deterioration (PSD) of Air Quality regulations promulgated by the EPA in Title 40 Code of Federal Regulations (CFR) at 40 CFR §52.21 as amended March 12, 1996 and the Definitions for Protection of Visibility promulgated at 40 CFR §51.301 as amended July 1, 1999, hereby incorporated by reference.~~]

(b) The *de minimis* threshold test (netting) is required for all modifications to existing major sources of federally regulated new source review pollutants, unless the proposed emissions increases associated with a project, without regard to decreases, are less than major modification thresholds for the pollutant identified in 40 Code of Federal Regulations (CFR) §52.21(b)(23).

(c) In applying the *de minimis* threshold test (netting), if the net emissions increases, aggregated over the contemporaneous period, are greater than the major modification levels for the pollutant identified in 40 CFR 52.21(b)(23), the following requirements apply.

(1) In addition to those definitions in §116.12 of this title (relating to Federal Permit Definitions) the following definitions from prevention of significant deterioration of air quality regulations promulgated by the United States Environmental Protection Agency (EPA) in 40 CFR §52.21 and the definitions for protection of visibility and promulgated in 40 CFR §51.301 as amended July 1, 1999, are incorporated by reference:

(A) 40 CFR §52.21(b)(13) - (15), concerning baseline concentrations, dates, and areas;

(B) 40 CFR §52.21(b)(19), concerning innovative control technology; and

(C) 40 CFR §52.21(b)(24) - (28), concerning federal land manager, terrain, and Indian reservations/governing bodies.

(2) The following requirements from prevention of significant deterioration of air quality regulations promulgated by the EPA in 40 CFR §52.21 are hereby incorporated by reference:

(A) 40 CFR §52.21(c) - (i), concerning increments, ambient air ceilings, restrictions on area classifications, exclusions from increment consumption, redesignation, stack heights, and exemptions;

(B) 40 CFR §52.21(k), concerning source impact analysis;

(C) 40 CFR §52.21(m) - (p), concerning air quality analysis, source information, additional impact analysis, and sources impacting federal Class I areas; and

(D) 40 CFR §52.21(v), concerning innovative technology.

(3) The term "facility" shall replace the words "emissions unit" in the referenced sections of the CFR.

(4) A determination to issue or not issue a permit shall be made within one year after receipt of a complete permit application, provided a contested case hearing has not been called on the application.

[~~(b) The following paragraphs are excluded:~~]

[~~(1) 40 CFR §52.21(j), concerning control technology review;~~]

[~~(2) 40 CFR §52.21(l), concerning air quality models;~~]

[~~(3) 40 CFR §52.21(q), concerning public notification (provided, however, that a determination to issue or not issue a permit shall be made within one year after receipt of a complete permit application so long as a contested case hearing has not been called on the application);~~]

[~~(4) 40 CFR §52.21(r)(2), concerning source obligation;~~]

[~~(5) 40 CFR §52.21(s), concerning environmental impact statements;~~]

[~~(6) 40 CFR §52.21(u), concerning delegation of authority; and~~]

[~~(7) 40 CFR §52.21(w), concerning permit rescission.~~]

[~~(c) The definitions of building, structure, facility, or installation (40 CFR §52.21(b)(6)) and secondary emissions (40 CFR §52.21(b)(18)) are excluded and replaced with the following definitions:~~]

[~~(1) building, structure, facility, or installation - all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e., which have the same first two-digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 supplement.~~]

[~~(2) secondary emissions - emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. Secondary emissions include emissions from any offsite support facility which would not be constructed or increase its emission except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.~~]

[~~(d) The term "executive director" shall replace the word "administrator," except in 40 CFR §52.21(b)(17), (f)(1)(v), (f)(3), (f)(4)(i), (g), and (t). "Administrator or executive director" shall replace "administrator" in 40 CFR §52.21(b)(3)(iii), and "administrator and executive director" shall replace "administrator" in 40 CFR §52.21(p)(2).~~]

(d) [~~(e)~~] All estimates of ambient concentrations required under this subsection shall be based on the applicable air quality models and modeling procedures specified in the EPA Guideline on Air Quality Models, as amended, or models and modeling procedures currently approved by the EPA for use in the state program, and other specific provisions made in the prevention of significant deterioration [~~PSD~~] state implementation plan. If the air quality impact model approved by the EPA or specified in the guideline is inappropriate, the model may be modified or another model substituted on a case-by-case basis, or a generic basis for the state program, where appropriate. Such a change

shall be subject to notice and opportunity for public hearing and written approval of the administrator of the EPA.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER C. HAZARDOUS AIR POLLUTANTS: REGULATIONS GOVERNING CONSTRUCTED OR RECONSTRUCTED MAJOR SOURCES (FCAA, SECTION 112(G), 40 CFR PART 63)

30 TAC §§116.180 - 116.183

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Commission on Environmental Quality or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The repeals are proposed under TWC, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The repeals are also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue permits and adopt rules necessary for permits issued under THSC, Chapter 382; §382.0512, concerning Modification of Existing Facility, which establishes a modification and its limits; §382.0518, concerning Preconstruction Permit, which requires that a permit be obtained from the commission prior to new construction or modification of an existing facility; and FCAA, 42 USC, §§7401 *et seq.*, which requires permits for construction and operation of new or modified major stationary sources.

The proposed repeals implement THSC, §§382.002, 382.011, 382.012, 382.051, 382.0512, and 382.0518; and FCAA, 42 USC, §§7401 *et seq*.

§116.180. Applicability.

§116.181. Exclusions.

§116.182. Application.

§116.183. Public Notice Requirements.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER C. PLANT-WIDE APPLICABILITY LIMITS
DIVISION 1. PLANT-WIDE APPLICABILITY LIMITS

30 TAC §§116.180, 116.182, 116.184, 116.186, 116.188, 116.190, 116.192, 116.194, 116.196, 116.198

STATUTORY AUTHORITY

The new sections are proposed under TWC, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The new sections are also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue permits and adopt rules necessary for permits issued under THSC, Chapter 382; §382.0512, concerning Modification of Existing Facility, which establishes a modification and its limits; §382.0518, concerning Preconstruction Permit, which requires that a permit be obtained from the commission prior to new construction or modification of an existing facility; and FCAA, 42 USC, §§7401 *et seq.*, which requires permits for construction and operation of new or modified major stationary sources.

The proposed new sections implement THSC, §§382.002, 382.011, 382.012, 382.051, 382.0512, and 382.0518; and FCAA, 42 USC, §§7401 *et seq*.

§116.180. Applicability.

(a) The following requirements apply to a plant-wide applicability limit (PAL) permit.

(1) Only one PAL may be issued for each pollutant at an account site.

(2) A PAL permit may include more than one PAL.

(3) A PAL permit may not cover facilities at more than one source.

(4) A PAL permit may be may be consolidated with a state or federal permit at the source.

(b) The new owner of a facility, group of facilities, or account shall comply with §116.110(e) of this title (relating to Applicability), provided that all facilities covered by a PAL permit change ownership at the same time and to the same person, or both the new owner and existing permit holder must obtain a PAL permit alteration allocating the emission prior to the transfer of the permit by the commission. After the sale of a facility, or facilities, but prior to the transfer of a permit requiring a permit alteration, the original PAL permit holder remains responsible for ensuring compliance with the existing PAL permit and all rules and regulations of the commission.

(c) The owner of the facility, group of facilities, or account or the operator of the facility, group of facilities, or account that is authorized to act for the owner is responsible for complying with this section, except as provided by subsection (b) of this section.

§116.182. Plant-wide Applicability Limit Permit Application.

Any application for a new plant-wide applicability limit (PAL) permit or PAL permit amendment must include a completed application that must be signed by an authorized representative. In order to be granted a PAL permit or PAL permit amendment, the owner or operator of the proposed facility shall submit information to the commission that demonstrates that all of the following information is submitted:

(1) a list of all facilities, including their registration or permit number to be included in the PAL, their potential to emit, and the expected maximum capacity. In addition, the owner or operator of the source shall indicate which, if any, federal or state applicable requirements, emission limitations, or work practices apply to each unit;

(2) calculations of the baseline actual emissions with supporting documentation;

(3) the calculation procedures that the permit holder proposes to use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total for each month;

(4) use of best available control technology (BACT) at the proposed facility or group of facilities, with consideration given to the technical practicability and economic reasonableness of reducing or eliminating the emissions from the facility on a proposed facility, group of facilities, or account basis. Control technology beyond BACT may be used on certain facilities to provide the emission reductions necessary to comply with this requirement on a group of facilities or account basis, provided that the existing level of control may not be lessened for any facility. Until December 31, 2006, facilities authorized by a flexible permit under Subchapter G of this chapter (relating to Flexible Permits) may satisfy this requirement on the basis of that review if the PAL effective period is limited to ten years from the date the PAL permit was issued. Facilities with flexible permits issued more than ten years ago must satisfy the control requirements for PAL permit renewals and the PAL effective period is limited to 20 years after the flexible permit issuance date;

(5) the monitoring and recordkeeping proposed satisfy the requirements of §116.186 of this title (relating to General and Special Conditions) for each PAL; and

(6) a control technology implementation schedule, if necessary, to satisfy the BACT requirement in paragraph (4) of this section.

§116.184. Application Review Schedule.

The plant-wide applicability limit permit application will be reviewed by the commission in accordance with §116.114 of this title (relating to Application Review Schedule).

§116.186. General and Special Conditions.

(a) The plant-wide applicability limit (PAL) will impose an annual emission limitation in tons per year, that is enforceable as a practical matter, for all facilities included in the PAL. For each month during the PAL effective period after the first 12 months of establishing a PAL, the major stationary source owner or operator shall show that the sum of the monthly emissions from each facility under the PAL for the previous 12 consecutive months is less than the PAL (a 12-month average, rolled monthly). For each month during the first 11 months from the PAL effective date, the major stationary source owner or operator shall show that the sum of the preceding monthly emissions from the PAL effective date for each facility under the PAL is less than the PAL. Each PAL must include emissions of only one pollutant. The PAL must include all emissions, including fugitive emissions, to the extent quantifiable, from all facilities included in the PAL that emit or have the potential to emit the PAL pollutant.

(b) The following general conditions will be applicable to every PAL permit.

(1) Applicability. This section does not authorize any facility to emit air pollutants but establishes an annual emissions level below which new and modified facilities will not be subject to federal new source review for that pollutant.

(2) Sampling requirements. If sampling of stacks or process vents is required, the PAL permit holder shall contact the commission's Office of Compliance and Enforcement prior to sampling to obtain the proper data forms and procedures. All sampling and testing procedures must be approved by the executive director and coordinated with the appropriate regional office of the commission. The PAL permit holder is also responsible for providing sampling facilities and conducting the sampling operations or contracting with an independent sampling consultant.

(3) Equivalency of methods. It shall be the responsibility of the PAL permit holder to demonstrate or otherwise justify the equivalency of emission control methods, sampling or other emission testing methods, and monitoring methods proposed as alternatives to methods indicated in the conditions of the PAL permit. Alternative methods must be applied for in writing and must be reviewed and approved by the executive director prior to their use in fulfilling any requirements of the permit.

(4) Recordkeeping and reporting.

(A) A copy of the PAL permit along with information and data sufficient to demonstrate continuous compliance with the emission caps contained in the PAL permit must be maintained in a file at the plant site and made available at the request of personnel from the agency or any air pollution control program having jurisdiction. For facilities that normally operate unattended, this information must be maintained at the nearest staffed location within Texas specified by the permit holder in the permit application. This information may include, but is not limited to, emission cap and individual emission limitation calculations based on a 12-month rolling basis and production records and operating hours. Additional recordkeeping requirements may be specified in special conditions attached to the PAL permit.

(B) The owner or operator shall retain a copy of the PAL permit application and any applications for revisions to the PAL, each annual certification of compliance under §122.146 of this title (relating to Compliance Certification Terms and Conditions), and the

data relied on in certifying the compliance for the duration of the PAL plus five years.

(5) Plantwide applicability limits. A PAL permit covers only those sources of emissions and those air contaminants identified in the table attached to the permit.

(6) Maintenance of emission control. The facilities covered by the PAL permit will not be operated unless all air pollution emission capture and abatement equipment is maintained in good working order and operating properly during normal facility operations.

(7) Compliance with rules. Acceptance of a PAL permit by a permit applicant constitutes an acknowledgment and agreement that the holder will comply with all rules and orders of the commission issued in conformity with the Texas Clean Air Act and the conditions precedent to the granting of the permit. If more than one state or federal rule or PAL permit condition is applicable, then the most stringent limit or condition will govern and be the standard by which compliance must be demonstrated. Acceptance includes consent to the entrance of commission employees and agents into the permitted premises at reasonable times to investigate conditions relating to the emission or concentration of air contaminants, including compliance with the PAL permit.

(8) Effective period. The PAL will be effective for ten years.

(9) Absence of monitoring data. A source owner or operator shall record and report maximum potential emissions without considering enforceable emission limitations or operational restrictions for a facility during any period of time that there is no monitoring data, unless another method for determining emissions during such periods is specified in the PAL permit special conditions.

(10) Re-validation. All data used to establish the PAL pollutant must be re-validated through performance testing or other scientifically valid means approved by the executive director. Such testing must occur at least once every five years after issuance of the PAL.

(c) Each PAL permit must include special conditions that satisfy the following requirements.

(1) The PAL monitoring system must accurately determine all emissions of the PAL pollutant in terms of mass per unit of time. Any monitoring system authorized for use in the PAL permit must be based on sound science and meet generally acceptable scientific procedures for data quality and manipulation. Additionally, the information generated by such a system must meet minimum legal requirements for admissibility in a judicial proceeding to enforce the PAL permit.

(2) The PAL monitoring system must employ one or more of the general monitoring approaches meeting the minimum requirements as described in subparagraphs (A) - (D) of this paragraph.

(A) An owner or operator using mass balance calculations to monitor PAL pollutant emissions from activities using coating or solvents shall meet the following requirements:

(i) provide a demonstrated means of validating the published content of the PAL pollutant that is contained in, or created by, all materials used in or at the facility;

(ii) assume that the facility emits all of the PAL pollutant that is contained in, or created by, any raw material or fuel used in or at the facility, if it cannot otherwise be accounted for in the process; and

(iii) where the vendor of a material or fuel that is used in or at the facility publishes a range of pollutant content from such material, the owner or operator shall use the highest value of the range to calculate the PAL pollutant emissions unless the executive director determines that there is site-specific data or a site-specific monitoring program to support another content within the range.

(B) An owner or operator using a continuous emission monitoring system (CEMS) to monitor PAL pollutant emissions shall meet the following requirements.

(i) The CEMS must comply with applicable performance specifications found in 40 Code of Federal Regulations Part 60, Appendix B.

(ii) The CEMS must sample, analyze, and record data at least every 15 minutes while the emissions unit is operating.

(C) An owner or operator using continuous parameter monitoring system (CPMS) or predictive emission monitoring system (PEMS) to monitor PAL pollutant emissions shall meet the following requirements.

(i) The CPMS or the PEMS must be based on current site-specific data demonstrating a correlation between the monitored parameter(s) and the PAL pollutant emissions across the range of operation of the facility.

(ii) Each CPMS or PEMS must sample, analyze, and record data at least every 15 minutes or at another less frequent interval approved by the executive director, while the facility is operating.

(D) An owner or operator using emission factors to monitor PAL pollutant emissions shall meet the following requirement.

(i) All emission factors must be adjusted, if appropriate, to account for the degree of uncertainty or limitations in the factors' development.

(ii) The facility must operate within the designated range of use for the emission factor, if applicable.

(iii) If technically practicable, the owner or operator of a significant facility that relies on an emission factor to calculate PAL pollutant emissions shall conduct validation testing to determine a site-specific emission factor within six months of PAL permit issuance, unless the executive director determines that testing is not required.

(E) An alternative monitoring approach must meet the requirements in paragraph (1) of this subsection and be approved by the executive director.

(3) Where an owner or operator of a facility cannot demonstrate a correlation between a monitored parameter(s) and the PAL pollutant emissions rate at all operating points of the facility, the executive director shall:

(A) establish default value(s) for determining compliance with the PAL based on the highest potential emissions reasonably estimated at such operating point(s); or

(B) determine that operation of the facility during operating conditions when there is no correlation between monitored parameter(s) and the PAL pollutant emissions is a violation of the PAL.

(4) If a facility requires the installation of additional controls to meet the best available control technology requirement in §116.182(4) of this title (relating to Plant-wide Applicability Limit Permit Application) for the pollutant, the PAL permit must specify an implementation schedule for such additional controls.

§116.188. Plant-wide Applicability Limit.

The plant-wide applicability limit (PAL) will be established as the sum of the baseline actual emissions of the PAL pollutant for each existing facility at the source to be covered. The allowable emission rate may be used for facilities that did not exist in the baseline period.

(1) An amount equal to the applicable significant level for the PAL pollutant may be added to the baseline actual emissions when establishing the PAL, but that quantity must be added to the result of the project emission increase at non-PAL facilities for any physical change, or change in the method of operation of a facility in the PAL. The amount must also be added to the result of the *de minimis* threshold test for any physical change, or change in the method of operation of a non-PAL facility.

(2) When establishing the PAL level for a PAL pollutant, only one consecutive 24-month period must be used to determine the baseline actual emissions for all existing facilities. However, a different consecutive 24-month period may be used for each different PAL pollutant.

(3) A PAL established concurrently with a federal major modification will be determined as follows. Prior to the start of operation of the new or modified facilities subject to federal NSR, the PAL shall be determined using baseline emissions as identified in §116.182(1) and (2) of this title (relating to Plant-wide Applicability Limit Permit Application). Upon the start of operation of the new or modified facilities subject to the major modification under prevention of significant deterioration and/or nonattainment review, as applicable, these facilities will contribute the authorized allowable emission rates to the PAL. Any baseline emissions associated with these facilities must be removed from the PAL at that time.

(4) The executive director shall specify a reduced PAL level(s) in the PAL permit to become effective on the future compliance date(s) of any applicable federal or state regulatory requirement(s) that is effective prior to issuance of the PAL permit.

§116.190. Federal Nonattainment and Prevention of Significant Deterioration Review.

(a) An increase in emissions from operational or physical changes at a facility covered by a plant-wide applicability limit (PAL) permit is insignificant, for the purposes of federal new source review under this subchapter, if the increase does not exceed the PAL.

(b) At no time are emissions reductions of a PAL pollutant that occur during the PAL effective period creditable as decreases for purposes of offsets, unless the level of the PAL is reduced by the amount of such emissions reductions and such reductions would be creditable in the absence of the PAL.

§116.192. Amendments and Alterations.

(a) Any increase in a plant-wide applicability limit (PAL) must be made through amendment. The new or modified facilities causing the need for the increase in the PAL must be reviewed prior to start of construction as a major modification under prevention of significant deterioration and/or nonattainment review, as applicable, for each pollutant requiring an increase in a PAL. The PAL must be reestablished concurrently with the issued or amended permit by adding the authorized allowable emission rates for the new or modified facilities to the baseline emissions for operating facilities used to establish the issued or renewed PAL for the remaining facilities. Amendments must also include the information identified in §116.182 of this title (relating to Plant-wide Applicability Limit Permit Application) for new and modified facilities to be included in the PAL and are subject to the public notice requirements under §116.194 of this title (relating to Public Notice and Comment). The PAL level will be increased effective on the day each facility that is part of the PAL major modification becomes operational and emits the PAL pollutant.

(b) Any changes to the control technology proposed to satisfy §116.182(4) of this title must be made through amendment. These changes shall include information necessary to demonstrate that the proposed change satisfies those requirements. Changes to the implementation schedule must be requested through permit alteration.

(c) Changes to PAL permits that do not require the PAL to be increased must be completed through permit alteration. Unless allowed in the PAL permit special conditions, the permit holder shall submit an alteration request prior to start of construction for physical modifications to facilities or installation of new facilities under the PAL. Approval must be received from the executive director prior to start of operation of the facilities if the emissions from the new or modified facilities may exceed 100 tons per year.

§116.194. Public Notice and Comment.

The applicant shall also provide for public notice on the draft plant-wide applicability limit permit in accordance with Chapter 39, Subchapters H and K of this title (relating to Applicability and General Provisions; and Public Notice of Air Quality Applications) for all initial applications, amendments, and renewals of a plant-wide applicability limit permit.

§116.196. Renewal of a Plant-wide Applicability Limit Permit.

(a) A stationary source owner or operator shall submit a timely application to the executive director to request renewal of a plant-wide applicability limit (PAL) permit. A timely application is one that is submitted at least six months prior to, but not earlier than 18 months from, the date of permit expiration. If the owner or operator of a stationary source submits a complete application to renew the PAL permit within this time period, then the permit will continue to be effective until the revised permit with the renewed PAL is issued or the PAL permit is voided.

(b) All PAL permits issued prior to the effective date of this section are subject to the renewal requirements under this section. These permits must be renewed by December 31, 2006, or within the time frame specified in subsection (a) of this section, whichever is later.

(c) The following information must be submitted with a PAL renewal application:

(1) a proposed PAL level;

(2) an identification of the facilities that are qualified as defined in §116.10 of this title (relating to General Definitions) with supporting documentation;

(3) the sum of the potential to emit of all facilities under the PAL, with supporting documentation, and the greatest rolling 12-month actual emission rate during the PAL effective period for facilities that are not qualified;

(4) information as identified in §116.182(1) and (5) of this title (relating to Plant-wide Applicability Limit Permit Application); and

(5) any other information the owner or operator wishes the executive director to consider in determining the appropriate level for renewing the PAL.

(d) The proposed PAL level and a written rationale for the proposed PAL level are subject to the public notice requirements in §116.194 of this title (relating to Public Notice and Comment). During such public review, any person may propose a PAL level for the source for consideration by the executive director.

(e) The level of the renewed PAL must be established by setting the cap to equal the sum of the design emission rates from all qualified facilities, the greatest rolling 12-month actual emissions during the PAL effective period for facilities that are not qualified, and the applicable federal *de minimis* level subject to the following limitations.

(1) If the potential to emit of the stationary source is less than the PAL, the PAL must be adjusted to a level no greater than the potential to emit of the source.

(2) A renewed PAL must not be set at a level higher than the current PAL, unless the PAL is being amended concurrently with the renewal.

(3) If the compliance date for a state or federal requirement that applies to the PAL source occurs during the PAL effective period, the PAL cap contribution for the affected facility shall be adjusted down accordingly.

§116.198. Expiration or Voidance.

(a) A plant-wide applicability limit (PAL) permit holder may request that the permit be voided at any time after initial issuance. That request must include documentation demonstrating that all required control technology upgrades have been completed for that pollutant or propose an alternate mechanism for making the upgrades enforceable. The PAL permit remains effective until voided by the executive director.

(b) If a PAL permit expires or is voided, each facility must comply with all allowable emission limitations associated with the state new source review authorization. Any physical change or change in the method of operation at the major stationary source will be subject to major new source review requirements if such change meets the definition of major modification. The owner or operator shall continue to comply with any state or federal applicable requirements that may have applied during the PAL permit effective period.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Stephanie Bergeron Perdue
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Texas Commission on Environmental Quality
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SUBCHAPTER E. HAZARDOUS AIR POLLUTANTS: REGULATIONS GOVERNING CONSTRUCTED OR RECONSTRUCTED MAJOR SOURCES (FCAA, SECTION 112(G), 40 CFR PART 63)

30 TAC §§116.400, 116.402, 116.404, 116.406

STATUTORY AUTHORITY

The new sections are proposed under TWC, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The new sections are also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue permits and adopt rules necessary for permits issued under THSC, Chapter 382; §382.0512, concerning Modification of Existing Facility, which establishes a modification and its limits; and §382.0518, concerning Preconstruction Permit, which requires that a permit be obtained from the commission prior to new construction or modification of an existing facility.

The proposed new sections implement THSC, §§382.002, 382.011, 382.012, 382.051, and 382.0518.

§116.400. Applicability.

(a) The provisions of this subchapter implement Federal Clean Air Act (FCAA), §112(g), Modifications, and 40 Code of Federal Regulations Part 63, Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources, Subpart B, Requirements for Control Technology, as amended December 27, 1996. Affected sources (as defined in §116.15(1) of this title (relating to Section 112(g) Definitions)) subject to this subchapter are those sources for which the United States Environmental Protection Agency has not promulgated a maximum available control technology (MACT) standard under 40 Code of Federal Regulations (CFR) Part 63. For purposes of this subchapter, the following terms apply.

(1) Construct a major source--As follows.

(A) To fabricate, erect, or install at any green field site a stationary source or group of stationary sources that are located within a contiguous area and under common control and that emit or have the potential to emit ten tons per year of any hazardous air pollutant (HAP) or 25 tons per year of any combination of HAPs;

(B) to fabricate, erect, or install at any developed site a new process or production unit that in and of itself emits or has the potential to emit ten tons per year of any HAP or 25 tons per year of any combination of HAPs, unless the process or production unit satisfies clauses (i) - (vi) of this subparagraph:

(i) all HAPs emitted by the process or production unit that would otherwise be controlled under the requirements of this subchapter will be controlled by emission control equipment that was previously installed at the same site as the process or production unit;

(ii) either of the following regarding control of HAP emissions:

(I) the executive director has determined within a period of five years prior to the fabrication, erection, or installation of the process or production unit that the existing emission control equipment represented best available control technology (BACT), lowest achievable emission rate (LAER) under 40 CFR Part 51 or Part 52, toxics-best available control technology (T-BACT), or MACT based on state air toxic rules for the category of pollutants that includes those HAPs to be emitted by the process or production unit; or

(II) the executive director determines that the control of HAP emissions provided by the existing equipment will be equivalent to that level of control currently achieved by other similar sources using a level of control equivalent to current BACT, LAER, T-BACT, or state air toxic rule MACT determination;

(iii) the executive director determines that the percent control efficiency for emissions of HAP from all sources to be controlled by the existing control equipment will be equivalent to the percent control efficiency provided by the control equipment prior to the inclusion of the new process or production unit;

(iv) the executive director has provided notice and an opportunity for public comment concerning the determination that criteria in clauses (i) - (iii) of this subparagraph apply and concerning the continued adequacy of any prior LAER, BACT, T-BACT, or state air toxic rule MACT determination;

(v) if any commenter has asserted that a prior LAER, BACT, T-BACT, or state air toxic rule MACT determination is no longer adequate, the executive director has determined that the level of control required by that prior determination remains adequate; and

(vi) any emission limitations, work practice requirements, or other terms and conditions upon which the determinations in clauses (i) - (v) of this subparagraph are predicated will be construed by the executive director as applicable requirements under FCAA, §504(a), and either have been incorporated into any existing permit issued under Chapter 122 of this title (relating to Federal Operating Permits) for the affected source (as defined in §116.15(1) of this title (relating to Section 112(g) Definitions)) or will be incorporated into such permit upon issuance.

(2) Reconstruct a major source--The replacement of components at an existing process or production unit that in and of itself emits or has the potential to emit ten tons per year of any HAP or 25 tons per year of any combination of HAP, whenever:

(A) the fixed capital cost of the new components exceeds 50% of the fixed capital cost that would be required to construct a comparable process or production unit; and

(B) it is technically and economically feasible for the reconstructed major source to meet the applicable MACT emission limitation for new sources established under this subchapter.

(b) The requirements of this subchapter apply to an owner or operator of an affected source (as defined in §116.15(1) of this title) that constructs or reconstructs, unless the affected source in question has been specifically regulated or exempted from regulation under a standard issued under FCAA, §112(d), (h), or (j) and incorporated in another subpart of 40 CFR Part 63, or the owner or operator of such affected source has received all necessary air quality permits for such construction or reconstruction project.

(c) Affected sources (as defined in §116.15(1) of this title) subject to the requirements of this subchapter are not eligible to use a standard permit under Subchapter F of this chapter (relating to Standard Permits) unless the terms and conditions of the specific standard permit meet the requirements of this subchapter.

§116.402. Exclusions.

(a) The requirements of this subchapter do not apply to electric utility steam generating units unless and until such time as these units are added to the source category list under Federal Clean Air Act, §112(c)(5).

(b) The requirements of this subchapter do not apply to stationary sources that are within a source category that has been deleted from the source category list under Federal Clean Air Act, §112(c)(9).

(c) The requirements of this subchapter do not apply to research and development activities, as defined in 40 Code of Federal Regulations, §63.41.

(d) Nothing in this subchapter shall prevent a state or local agency from imposing more stringent requirements than those contained in this subchapter.

§116.404. Application.

Consistent with the requirements of 40 Code of Federal Regulations §63.43 (concerning maximum achievable control technology determinations for constructed and reconstructed major sources), the owner or operator of a proposed affected source (as defined in §116.15(1) of this title (relating to Section 112(g) Definitions)) shall submit a permit application as described in §116.110 of this title (relating to Applicability).

§116.406. Public Notice Requirements.

Proposed affected sources (as defined in §116.15(1) of this title (relating to Section 112(g) Definitions)) shall comply with the public notice requirements contained in Chapter 39 of this title (relating to Public Notice).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER E. EMERGENCY ORDERS

30 TAC §116.410

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Commission on Environmental Quality or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The repeal is proposed under TWC, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The repeal is also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the

state's air; and §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air.

The proposed repeal implements THSC, §§382.002, 382.011, and 382.012.

§116.410. Applicability.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER F. STANDARD PERMITS

30 TAC §116.610, §116.617

STATUTORY AUTHORITY

The amendment and new section are proposed under TWC, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The amendment and new section are also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue permits and adopt rules necessary for permits issued under THSC and to issue a standard permit for similar facilities, Chapter 382; §382.0512, concerning Modification of Existing Facility, which establishes a modification and its limits; §382.0518, concerning Preconstruction Permit, which requires that a permit be obtained from the commission prior to new construction or modification of an existing facility; and §382.05195, concerning Standard Permit, which authorizes the commission to issue a standard permit for new or existing similar facilities if the standard permit is enforceable, and the commission can adequately monitor compliance with the terms of the standard permit; and FCAA, 42 USC, §§7401 *et seq*., that requires permits for construction and operation of new or modified major stationary sources.

The proposed amendment and new section implement THSC, §§382.002, 382.011, 382.012, 382.051, 382.0512, 382.0518, and 382.05195; and FCAA, 42 USC, §§7401 *et seq*.

§116.610. Applicability.

(a) Under the Texas Clean Air Act [~~TCAA~~], §382.051, a project that [~~which~~] meets the requirements for a standard permit listed in this subchapter or issued by the commission is hereby entitled to the standard permit, provided the following conditions listed in this section are met. For the purposes of this subchapter, project means the construction or modification of a facility or a group of facilities submitted under the same registration. [~~:~~]

(1) Any [~~any~~] project that [~~which~~] results in a net increase in emissions of air contaminants from the project other than carbon dioxide, water, nitrogen, methane, ethane, hydrogen, oxygen, or those for which a national ambient air quality standard [~~National Ambient Air Quality Standard~~] has been established must meet the emission limitations of §106.261[~~(3) or (4) or §106.262(3)~~] of this title (relating to Facilities (Emission Limitations) [~~, and Facilities (Emission and Distance Limitations))~~], unless otherwise specified by a particular standard permit. [~~;~~]

(2) Construction [~~construction~~] or operation of the project must be commenced prior to the effective date of a revision to this subchapter under which the project would no longer meet the requirements for a standard permit. [~~;~~]

(3) The [~~the~~] proposed project must comply with the applicable provisions of the Federal Clean Air Act (FCAA) [~~FCAA~~], §111 (concerning New Source Performance Standards) as listed under [~~Title~~] 40 Code of Federal Regulations (CFR) Part 60, promulgated by the EPA. [~~;~~]

(4) The [~~the~~] proposed project must comply with the applicable provisions of FCAA, §112 (concerning Hazardous Air Pollutants) as listed under 40 CFR Part 61, promulgated by the United States Environmental Protection Agency (EPA). [~~EPA;~~]

(5) The [~~the~~] proposed project must comply with the applicable maximum achievable control technology standards as listed under 40 CFR Part 63, promulgated by the EPA under FCAA, §112 or as listed under Chapter 113, Subchapter C of this title (relating to National Emissions Standards for Hazardous Air Pollutants for Source Categories (FCAA, §112, 40 CFR Part 63)). [~~; and~~]

(6) (No change.)

(b) Any project [~~, except those authorized under §116.617 of this title (relating to Standard Permits for Pollution Control Projects),~~] which constitutes a new major source[~~,~~] or major modification under the new source review requirements of the FCAA, Part C (Prevention of Significant Deterioration Review) or Part D (Nonattainment Review) and regulations promulgated thereunder is subject to the requirements of §116.110 of this title (relating to Applicability) rather than this subchapter.

(c) - (d) (No change.)

§116.617. State Pollution Control Project Standard Permit.

(a) Scope and applicability.

(1) This standard permit applies to pollution control projects undertaken voluntarily or as required by any governmental standard, that reduce or maintain currently authorized emission rates for facilities authorized by a permit, standard permit, or permit by rule.

(2) The project may include:

(A) the installation or replacement of emissions control equipment;

(B) the implementation or change to control techniques; or

(C) the substitution of compounds used in manufacturing processes.

(3) This standard permit must not be used to authorize the installation of emission control equipment or the implementation of a control technique that:

(A) constitutes the complete replacement of an existing production facility or reconstruction of a production facility as defined in 40 Code of Federal Regulations (40 CFR) §60.15(b)(1) and (c); or

(B) the executive director determines there are health effects concerns or the potential to exceed a national ambient air quality standard (NAAQS) criteria pollutant or contaminant that results from an increase in emissions of any air contaminant until those concerns are addressed by the registrant to the satisfaction of the executive director; or

(C) returns a facility or group of facilities to compliance with an existing authorization or permit.

(4) Only new or modified pollution control projects must meet the conditions of this standard permit. All previous standard permit registrations under §116.617 of this title (relating to Standard Permits for Pollution Control Projects) that were authorized prior to the effective date of this rule must include the increases and decreases in emissions resulting from those projects in any future netting calculation and all other conditions must be met upon the ten-year anniversary and renewal of the original registration, or until administratively incorporated into the facilities' permit, if applicable.

(b) General requirements.

(1) Any claim under this standard permit must comply with all applicable conditions of:

(A) §116.604(1) and (2) of this title (relating to Duration and Renewal of Registrations to Use Standard Permits);

(B) §116.605(d)(1) and (2) of this title (relating to Standard Permit Amendment and Revocation);

(C) §116.610 of this title (relating to Applicability);

(D) §116.611 of this title (relating to Registration to Use a Standard Permit);

(E) §116.614 of this title (relating to Standard Permit Fees); and

(F) §115.615 of this title (relating to General Conditions).

(2) Construction or implementation of the pollution control project must begin within 180 days of receiving written acceptance of the registration from the executive director and must comply with §116.115(b)(2) of this title and §116.120 of this title (relating to General and Special Conditions and Voiding of Permits). Any changes to allowable emission rates authorized by this section become effective when the project is complete and operation or implementation begins.

(3) The emissions limitations of §116.610(a)(1) of this title do not apply to this standard permit.

(4) Predictable maintenance, startup, and shutdown emissions directly associated with the pollution control projects must be included in the representations of the registration application.

(5) Any increases in actual or allowable emission rates or any increase in production capacity authorized by this section (including increases associated with recovering lost production capacity) must occur solely as a result of the project as represented in the registration application. Any increases of production associated with a pollution control project must not be utilized until an additional authorization is obtained.

(c) Replacement projects.

(1) The replacement of emissions control equipment or control technique under this standard permit is not limited to the method of control currently in place, provided that the control or technique is at least as effective as the current authorized method and all other requirements of this standard permit are met.

(2) The maintenance, startup, and shutdown emissions may be increased above currently authorized levels if the increase is necessary to implement the replacement project and maintenance, startup, and shutdown emissions were authorized for the existing control equipment or technique.

(3) Equipment installed under this section is subject to all applicable testing and recordkeeping requirements of the original control authorization. Alternate, equivalent monitoring, or records may be proposed by the applicant for review and approval of the executive director.

(d) Registration requirements.

(1) A registration application must be submitted in accordance with the following.

(A) If there are no increases in authorized emissions of any air contaminant resulting from a replacement pollution control project, a registration must be submitted no later than 30 days after construction or implementation begins and the registration must be accompanied by a $900 fee.

(B) If a new control device or technique is authorized or if there are increases in authorized emissions of any air contaminant resulting from the pollution control project, a registration must be submitted no later than 30 days prior to construction or implementation. The registration must be accompanied by a $900 fee. Construction or implementation may begin only after:

(i) no written response has been received from the executive director within 30 calendar days of receipt by the Texas Commission on Environmental Quality (TCEQ); or

(ii) written acceptance of the pollution control project has been issued by the executive director.

(C) If there are any changes in representations to a previously authorized pollution control project standard permit for which there are no increases in authorized emissions of any air contaminant, a notification or letter must be submitted no later than 30 days after construction or implementation of the change begins. No fee applies and no response will be sent from the executive director.

(D) If there are any changes in representations to a previously authorized pollution control project standard permit that also increase authorized emissions of any air contaminant resulting from the pollution control project, a registration alteration must be submitted no later than 30 days prior to the start of construction or implementation of the change. The registration must be accompanied by a $450 fee, unless received within 180 days of the original registration approval. Construction or implementation may begin only after:

(i) no written response has been received from the executive director within 30 calendar days of receipt by the TCEQ; or

(ii) written acceptance of the pollution control project has been issued by the executive director.

(2) The registration application must include the following:

(A) a description of process units affected by the project;

(B) a description of the project;

(C) identification of existing permits or registrations affected by the project;

(D) quantification and basis of increases and/or decreases associated with the project, including identification of affected existing or proposed emission points, all air contaminants, and hourly and annual emissions rates;

(E) a description of proposed monitoring and recordkeeping that will demonstrate that the project decreases or maintains emission rates as represented; and

(F) a description of how the standard permit will be administratively incorporated into the existing permit(s).

(e) Operational requirements. Upon installation of the pollution control project, the owner or operator shall comply with the requirements of paragraphs (1) and (2) of this subsection.

(1) General duty. The owner or operator must operate the pollution control project in a manner consistent with good industry and engineering practices and in such a way as to minimize emissions of collateral pollutants, within the physical configuration and operational standards usually associated with the emissions control device, strategy, or technique.

(2) Recordkeeping. The owner or operator must maintain copies on site of monitoring or other emission records to prove that the pollution control project is operated consistent with the requirements in paragraph (1) of this subsection, and the conditions of this standard permit.

(f) Incorporation of the standard permit into the facility authorization.

(1) Any new facilities or changes in method of control or technique authorized by this standard permit at a previously permitted or standard permitted facility must be incorporated into that facility's permit when the permit is amended or renewed. Incorporation during amendments or renewal must meet the following:

(A) authorized changes will be subject to an impacts review based on the Effects Evaluation Flowchart and "Air Quality Modeling Guidelines" except for facilities permitted under another standard permit;

(B) authorized changes will not be subject to best available control technology review;

(C) this standard permit will be voided and the changes and emissions will become authorized by the permit or standard permit; and

(D) any emission increases authorized by this standard permit will not be considered for purposes of triggering public notice for amendments.

(2) All increases in previously authorized emissions, new facilities, or changes in method of control or technique authorized by this standard permit for facilities previously authorized by a permit by rule must comply with §106.4 of this title (relating to Requirements for Permitting by Rule), except §106.4(a)(1) of this title, and §106.8 of this title (relating to Recordkeeping).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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30 TAC §116.617

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Commission on Environmental Quality or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The repeal is proposed under TWC, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The repeal is also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; and §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue permits and adopt rules necessary for permits issued under THSC, Chapter 382.

The proposed repeal implements THSC, §§382.002, 382.011, 382.012, and 382.051.

§116.617. Standard Permits for Pollution Control Projects.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER K. EMERGENCY ORDERS

30 TAC §116.1200

STATUTORY AUTHORITY

The new section is proposed under TWC, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize

the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The new section is also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; and §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue permits and adopt rules necessary for permits issued under THSC.

The proposed new section implements THSC, §§382.002, 382.011, 382.012, and 382.051.

§116.1200. Applicability.

The owner or operator of a facility may apply to the commission or the executive director for an emergency order under Texas Water Code, §5.515, and Chapter 35 of this title (relating to Emergency and Temporary Orders and Permits; Temporary Suspension or Amendment of Permit Conditions), to authorize immediate action for the addition, replacement, or repair of facilities or control equipment, and authorizing associated emissions of air contaminants, whenever a catastrophe necessitates such construction and emissions otherwise precluded under the Texas Clean Air Act.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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CHAPTER 290. PUBLIC DRINKING WATER
SUBCHAPTER G. WATER SAVING PERFORMANCE STANDARDS

30 TAC §§290.251 - 290.253, 290.256

The Texas Commission on Environmental Quality (commission) proposes to amend §§290.251 - 290.253, and 290.256.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The 79th Legislature, 2005, passed House Bill (HB) 2428, which relates to water and energy saving performance standards for commercial pre-rinse spray valves. HB 2428 amended Texas Health and Safety Code (THSC), §372.001, by adding a definition for commercial pre-rinse spray valves and THSC, §372.005, by adding performance standards for commercial pre-rinse spray valves and related fees.

This bill requires the commission to develop and maintain a current list of commercial pre-rinse spray valves that are certified to the commission by the manufacturer or importer and meet the performance standards. This bill also allows the commission to remove from the list any valve the commission determines to be inaccurately certified. Next, this bill allows the commission to assess a reasonable fee to the manufacturer or importer for an inspection of a commercial pre-rinse spray valve to determine the accuracy of the certification in an amount determined by the commission to cover the expenses incurred in implementing THSC, Chapter 372. Finally HB 2428 provided temporary exemptions for sellers, distributors, lessors, or importers of these valves.

HB 2428 is effective January 1, 2006.

SECTION BY SECTION DISCUSSION

The commission proposes the amendments to §§290.251 - 290.253, and 290.256 to implement THSC, Chapter 372, as amended by the 79th Legislature, and the exemption provisions of HB 2428.

Proposed §290.251, Purpose, Authority, and Definitions, is amended by adding the definitions for "ASTM" and for "Commercial pre-rinse spray valve" and by adding commercial pre-rinse spray valves to the list of plumbing fixtures. The commission also proposes to renumber the subsequent definitions.

In proposed §290.251(3), the commission adds the definition for "ASTM" to specify the meaning of the term. This acronym is used in THSC, §372.005, as amended by the 79th Legislature. The commission is using this term in the proposed rules to ensure that the commission's rules correspond to the THSC.

In proposed §290.251(4), the commission defines "Commercial pre-rinse spray valve" as a handheld device that is designed and marketed for use with commercial dishwashing and ware washing equipment and that is used to spray water on dishes, flatware, and other food service items to remove food residue before the items are cleaned in a dishwasher or ware washer or by hand. This definition is from THSC, §372.005, and is included in the proposed rule to implement THSC, §372.005, as amended by the 79th Legislature.

The proposed amendment to §290.251(9), renumbered to paragraph (11), would add commercial pre-rinse spray valves to the definition of plumbing fixtures. The commission proposes this amendment to implement THSC, §372.005, as amended by the 79th Legislature.

In proposed §290.252, Design Standards, the commission adds the American Society for Testing and Materials standards to the list of water saving performance standards in subsection (b).

Proposed §290.252(b)(7) would specify the maximum flow rate from a commercial pre-rinse spray valve. The commission proposes this amendment to implement THSC, §372.005, as amended by the 79th Legislature.

In proposed §290.253, Plumbing Fixture List, the commission would add to subsection (a)(1) the words, "or the American Society for Testing and Materials." This proposed amendment would allow plumbing fixtures to be tested using these standards. The commission proposes this amendment to implement THSC, §372.005, as amended by the 79th Legislature.

In proposed §290.253, the commission would add subsection (c), which would allow the commission to assess against a manufacturer or importer a reasonable fee for an inspection of a

commercial pre-rinse spray valve to determine the accuracy of the manufacturer's or importer's certification in an amount determined by the commission to cover the expenses incurred in the administration of this chapter. The commission proposes this amendment to implement THSC, §372.005, as amended by the 79th Legislature.

In the proposed amendment to §290.256, Exemptions, the commission would reclassify the existing text as subsection (a). This text will now read as "(a) These sections do not apply to a plumbing fixture:. . .." This proposed amendment would allow the commission to add a subsection (b), which will define exemptions to the new commercial pre-rinse spray valve rules. The commission proposes this amendment to implement HB 2428, §3.

Also in the proposed amendment to §290.256, the commission would add subsection (b), which will provide exemptions for sellers, distributors, lessors, or importers of certain commercial pre-rinse spray valves sold before September 1, 2006. The commission proposes this amendment to implement HB 2428, §3.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Walter Perry, Analyst, Strategic Planning and Assessment Section, determined that for the first five-year period the proposed amendments are in effect, no significant fiscal implications are anticipated for the agency or other units of state or local government.

The proposed changes would place commercial pre-rinse spray valves on the approved plumbing fixtures list, which is maintained by the plumbing fixtures program, and therefore restrict the sale of commercial pre-rinse spray valves to those that are certified by the agency and included on the approved list. A commercial pre-rinse spray valve is a handheld device that is used to spray water on dishes, flatware, and other food service items to remove food residue before the items are cleaned in a dishwasher or by hand. The proposed rulemaking would be applicable to all commercial pre-rinse spray valves sold after September 1, 2006.

The proposed rules would specify the maximum flow rate for a commercial pre-rinse spray valve, include American Society for Testing and Materials (ASTM) standards as the method for testing commercial pre-rinse spray valves, and authorize the commission to charge manufacturers or importers a listing fee of $50 for initial listing and an annual fee of $25 for each model of commercial pre-rinse spray valve sold in the State of Texas. It is projected that this would result in additional revenue for the agency between $500 and $600 for Fiscal Year 2006 and between $250 and $300 for each successive fiscal year. The additional revenue would be deposited to the Water Resource Management Account. The commission would also be authorized to charge manufacturers or importers a fee for the inspection of commercial pre-rinse spray valves to determine the accuracy of the certification. The amount of the fee would be determined by the commission to cover the expenses incurred.

PUBLIC BENEFITS AND COSTS

Mr. Perry also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be the conservation of water when utilizing commercial pre-rinse spray valves. This has the potential to have a positive impact by reducing the overall consumption of water in a community and on the ability of public water systems to provide services to its customers.

The proposed rules would have a fiscal impact for businesses or individuals that use commercial pre-rinse spray valves. A business that utilizes an approved commercial pre-rinse spray valve could potentially save up to 50 gallons of water per hour of use. The actual amount of savings would depend on the amount of water consumed. The projected savings per facility using its spray valve for one hour a day would be between $200 and $250 per year.

The rulemaking would require manufacturers of commercial pre-rinse spray valves to pay a listing fee to the agency of $50 for each model of valve sold in the state with an annual renewal fee of $25. The proposed rules would also authorize the commission to assess a fee to the manufacturer or importer for an inspection of a commercial pre-rinse spray valve to determine the accuracy of the manufacturer's or importer's certification. The amount of such a fee would be determined by the commission to cover the expenses incurred.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rulemaking. Small and micro-businesses would experience the same potential cost savings as local governments and industry. It is not known how many small or micro-businesses would realize a cost savings as a result of the proposed rulemaking. Savings would be dependent upon the amount of water consumption for each business. It is projected that small or micro-businesses could save up to 50 gallons per hour by using an approved commercial pre-rinse spray valve. The proposed rulemaking would result in no additional cost for small and micro-businesses. No equipment upgrades or replacements would be required as a result of the proposed rules. The proposed rules do not require the replacement of existing commercial pre-rinse spray valves, only future sales of such valves.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the Texas Administrative Procedure Act. A "major environmental rule" is a rule that is specifically intended to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Here, the primary purpose of the proposed rules is to protect the environment through standardization and regulating the flow rate of pre-rinse spray valves, thereby reducing water and energy use. The proposed rules will not have an adverse material impact because they: 1) allow retailers, distributors, lessors, and importers of pre-rinse spray valves to continue selling their January 1, 2006, inventories or deliveries received up to February 1, 2006, until September 1, 2006; 2) do not require current users of these valves to purchase new units; and 3) limit the commission to assess a reasonable fee.

Furthermore, the proposed rulemaking does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a), where the proposed rules: 1) are specifically required by state law, namely THSC, §372.001 and §372.005; 2) do not exceed the express requirements of THSC, §372.001 and §372.005; 3) do not exceed a requirement of federal delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program where there is no federal delegation regarding commercial pre-rinse spray values and there is no agreement or contract between the federal government and the State of Texas or commission on commercial pre-rinse spray valves; and 4) are not an adoption of a rule solely under the general powers of the commission. Additionally, some of the proposed rulemaking is procedural in nature and does not address environmental risks or exposures. For example, the statutory requirement for the commission to maintain a list of commercial pre-rinse spray valves and the authority to assess a fee do not impact the environment.

Based on this assessment, the proposed rulemaking does not constitute a major environmental rule, and thus is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225. The commission invites public comment on this draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated these proposed rules and performed an assessment of whether these proposed rules constitute a takings under to Texas Government Code, Chapter 2007. The primary purpose of this proposed rulemaking action is to improve the water and energy saving performance standards of certain plumbing fixtures by requiring manufacturers and future users of commercial pre-rinse spray valves to implement spray valves with reduced flow rates. The proposed rules would substantially advance this stated purpose because reducing the flow rate of water used by the operators of pre-rinse spray values will save water and energy in the State of Texas.

Promulgation and enforcement of these proposed rules would be neither a statutory nor a constitutional taking of private real property. The proposed regulations do not affect a landowner's rights in private real property, in whole or in part, temporarily or permanently, because this rulemaking does not burden nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. More specifically, these rules do not require current operators of commercial pre-rinse spray valves to replace their existing equipment with the reduced flow valves and give businesses time to deplete their existing inventories. There are no burdens imposed on private real property, and the benefits to society are a more efficient use of water and energy of the State of Texas. Therefore, the proposed amendments do not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in §505.11(a)(6). Therefore, the proposed rules are not subject to the Texas Coastal Management Program.

SUBMITTAL OF COMMENTS

Comments may be submitted to Patricia Durón, MC 205, Texas Register Team, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Project Number 2005-037-290-PR. Comments must be received by 5:00 p.m., October 31, 2005. For further information, please contact Scott Swanson, Water Rights Permitting and Availability Section, at (512) 239-0703.

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code, §5.102, concerning General Powers, §5.103, concerning Rules, and §5.105, concerning General Policy, which provide the commission with the general powers to carry out its duties and authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code. The amendments are also proposed under THSC, §372.001(5), concerning the definition of a commercial pre-rinse spray valve, and §372.005, concerning commercial pre-rinse spray valve performance standards.

The proposed amendments implement THSC, §372.001(5) and §372.005 and the exemption provisions of HB 2428.

§290.251. Purpose, Authority, and Definitions.

(a) - (b) (No change.)

(c) Definitions. The following words and terms, when used in this subchapter, [~~shall~~] have the following meanings, unless the context clearly indicates otherwise.

(1) - (2) (No change.)

(3) ASTM--The American Society for Testing and Materials.

(4) Commercial pre-rinse spray valve--A handheld device that is designed and marketed for use with commercial dishwashing and ware washing equipment and that is used to spray water on dishes, flatware, and other food service items to remove food residue before the items are cleaned in a dishwasher or ware washer or by hand.

(5) [~~(3)~~] Import--The physical movement of merchandise into the State of Texas, including shipments to distributors, shipments to factory distributing branches, direct factory sales, shipments to retailers, shipments to factory distributing branches, shipments to sales districts, and shipments to factory-owned distributing outlets.

(6) [~~(4)~~] Importer--A business or individual that brings into the state plumbing fixtures from other countries or states for resale or installation (other than for their own domicile) within the state.

(7) [~~(5)~~] Major supplier--A business or individual that provides plumbing fixtures to others for resale or installation (other than for their own domicile) within the state.

(8) [~~(6)~~] Manufacturer--Someone who manufactures plumbing fixtures or clothes washing machines.

(9) [~~(7)~~] Model--A type or design of a plumbing fixture.

(10) [~~(8)~~] Order--A request to purchase plumbing fixtures from a manufacturer, major supplier, or importer.

(11) [~~(9)~~] Plumbing fixture--A sink faucet, lavatory faucet, faucet aerator, shower head, urinal, toilet, flush valve toilet, [~~or~~] drinking water fountain, or commercial pre-rinse spray valve.

(12) [~~(10)~~] Toilet--A toilet or water closet except a wall-mounted toilet that employs a flushometer valve.

(13) [~~(11)~~] Water consumption factor--The quotient of the total weighted per cycle consumption divided by the capacity of the clothes washer, as stated in 10 Code of Federal Regulations Part 430, Subpart B, Appendix J, September 1, 2001.

§290.252. Design Standards.

(a) (No change.)

(b) The water saving performance standards for a plumbing fixture are those established by the American National Standards Institute (ANSI), the American Society for Testing and Materials (ASTM), current revision, or the following standards, whichever are the more restrictive.

(1) - (6) (No change.)

(7) The maximum flow rate from a commercial pre-rinse spray valve shall not exceed 1.6 gallons of water per minute when tested with the method specified in ASTM F2324-03.

§290.253. Plumbing Fixture List.

(a) The commission shall make and maintain a current list of plumbing fixtures that are certified to the commission by the manufacturer or importer to meet the water saving performance standards established by §290.252(b) of this title (relating to Design Standards). To have a plumbing fixture included on the commission's current list, a manufacturer or importer must:

(1) furnish identification method and testing data that [~~which~~] clearly indicates that the plumbing fixture was tested in accordance with American National Standards Institute or the American Society for Testing and Materials requirements and complies with the flow requirements established in §290.252(b) of this title [~~relating to Design Standards~~]; or

(2) - (3) (No change.)

(b) (No change.)

(c) The commission may assess against a manufacturer or importer a reasonable fee for an inspection of a commercial pre-rinse spray valve to determine the accuracy of the manufacturer's or importer's certification in an amount determined by the commission to cover the expenses incurred in the administration of this chapter.

§290.256. Exemptions.

(a) These sections do not apply to a plumbing fixture:

(1) that has been ordered by or is in the inventory of a building contractor or a wholesaler or retailer in Texas on or before January 1, 1992;

(2) such as a safety shower or aspirator faucet, that, because of the fixture's specialized function, cannot meet the standards established by these sections (example: fixtures in handicapped modified showers, etc.);

(3) originally installed before January 1, 1992, that is removed and reinstalled in the same building on or after that date; or

(4) imported only for use at the importer's domicile.

(b) These sections do not apply to a commercial pre-rinse spray valve that:

(1) as of January 1, 2006:

(A) is in the inventory of a commercial pre-rinse spray valve retailer, distributor, lessor, or importer; or

(B) has been ordered by a commercial pre-rinse spray valve retailer, distributor, lessor, or importer and is delivered before February 1, 2006; and

(2) is sold before September 1, 2006.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 16, 2005.

TRD-200504103
Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: October 30, 2005
For further information, please call: (512) 239-6087

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CHAPTER 291. UTILITY REGULATIONS

The Texas Commission on Environmental Quality (commission) proposes amendments to §§291.3, 291.5, 291.7, 291.101, 291.102, 291.104 - 291.106, 291.109, 291.113, 291.115, 291.117, and 291.119. The commission also proposes new §291.120.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The 79th Legislature, 2005, passed House Bill (HB) 2876, which amended Texas Water Code (TWC), §§13.002, 13.241, 13.242, 13.244, 13.246, 13.247, 13.254, 13.255, and 13.257. This bill also added §§13.245, 13.2451, and 13.2551 to the TWC and repealed TWC, §13.254(h) and §13.2541. These changes relate to revising the criteria for obtaining, amending, transferring, and decertifying certificates of convenience and necessity (CCNs) for water and sewer service. These changes also amended the mapping requirements, which now require CCN holders to file a copy of their service area maps in the respective county deed records. The commission proposes to change the requirements in this chapter to correspond with the newly amended sections of the TWC.

The 79th Legislature also passed Senate Bill (SB) 425, relating to subdivision platting requirements and assistance for certain counties near an international border, which amended the definition of affected county. The commission proposes to revise the definition of affected county in this rulemaking to correspond with the TWC.

In addition to the changes based on HB 2876 and SB 425, the commission also proposes to modify the definition of service; to amend the contents of the CCN application; to amend the notice requirements for CCN transfers by contract under TWC, §13.248; to amend the requirements for utilities that want to change names; to amend the requirements for an agreement to consent from the affected utility for dual certification; to more specifically explain some of the criteria for granting or amending a CCN; to more specifically explain CCN decertification and cancellation procedures; and to amend the requirements for applicants who owe delinquent fees or penalties. These are requirements that have been identified as causing confusion because of differing interpretations. The changes the commission proposes to these requirements would help to clarify these rules and eliminate the differences in interpretation. This will provide more certainty for the entities that are regulated by these rules.

HB 2876 requires the commission to promulgate rules to implement the changes to the TWC by January 1, 2006.

SECTION BY SECTION DISCUSSION

The commission proposes to update the names of the agency, the division, and the section used in Subchapters A and G. The commission also proposes to update references to the TWC. Finally, the commission proposes to make formatting changes throughout Subchapters A and G to be consistent with guidance provided in the *Texas Legislative Council Drafting Manual*, November 2004 and to conform with Texas Register and agency guidelines.

Subchapter A, General Provisions

The commission proposes an amendment to §291.3, Definitions of Terms, which would revise the definition of "Affected county" from "a county any part of which is within 50 miles of an international border" to "a county to which Local Government Code, Chapter 232, Subchapter B, applies." The commission proposes this change to §291.3 to be consistent with TWC, Chapter 13. The proposed definition refers to Local Government Code, Chapter 232, which states that an affected county is defined by TWC, §16.341, that has adopted the model rules developed under TWC, §16.343. SB 425 modified the definition of affected county under TWC, §16.341. The commission also proposes to amend the definition of "Affected person" to include any landowner within an area for which an application for a new or amended CCN is filed. This definition is from TWC, §13.002, however, the commission proposes to add "an application for a new or amended" to the definition to clarify that this definition encompasses applications for both new and amended CCNs. The commission also proposes to add a definition for the word "Landowner." The proposed definition is an owner or owners of a tract of land including multiple owners of a single deeded tract of land. The commission proposes these changes to §291.3 to implement TWC, §13.002, as amended by the 79th Legislature. The commission proposes to renumber the definitions to accommodate the addition of the definition of "Landowner." The commission proposes to amend the definition of "Service" to ensure that it is consistent with the definition of service in TWC, §13.002(21).

The commission proposes an amendment to §291.5, Submission of Documents, to update the name of the Utilities and Districts Section and the name of the agency.

The commission proposes an amendment to §291.7, Filing Fees, to update the citation to the TWC.

Subchapter G, Certificates of Convenience and Necessity

The commission proposes an amendment to §291.101, Certificate Required, which specifies when a CCN is required. The commission proposes to add a new subsection (d) that would specify that a supplier of wholesale water or sewer service may not require a purchaser to obtain a CCN if the purchaser is not otherwise required by this chapter to obtain the certificate. The commission proposes this amendment to implement TWC, §13.242, as amended by the 79th Legislature.

The commission proposes an amendment to §291.102, Criteria for Considering and Granting Certificates or Amendments, which lists the criteria the commission is required to consider to grant a new CCN. The commission proposes to amend this section by specifying that the criteria the commission considers is for requests for both new and amended CCNs. The commission proposes this amendment to implement TWC, §13.246(b), as amended by the 79th Legislature.

In §291.102(c) the commission proposes to add "or amendment" to clarify that it is the certificate or the amendment that the commission must determine is necessary.

In §291.102(d)(2) the commission proposes to add as a consideration whether any landowners, prospective landowners, tenants, or residents have requested service. The commission proposes this amendment to implement TWC, §13.246(c), as amended by the 79th Legislature. Also in subsection (d)(2), the commission proposes to define as new subparagraphs (A) - (D) the factors the commission will review when considering the need for additional service in the area. Staff has discussed with stakeholders the factors that the commission considers and has been requested to clarify this information, therefore, the commission proposes these amendments to provide clarity for applicants and the regulated community regarding the commission's considerations. In subsection (d)(3) the commission proposes to add as a consideration the effect that granting or amending a certificate will have on the recipient of the certificate and on landowners in the area. The commission proposes this amendment to implement TWC, §13.246(c), as amended by the 79th Legislature. Also in subsection (d)(3) the commission proposes to specify that when considering the effect of granting a CCN the commissioners will look at the effect on regionalization of the area, the utility's compliance history, and the economic effect on the area. This is information that the commission's staff has discussed with stakeholders and been requested to clarify, therefore, the commission proposes these amendments to provide additional information for applicants and the regulated community regarding the commission's considerations. In subsection (d)(4) the commission proposes to add as a consideration whether the applicant can meet the standards of the commission, taking into consideration the current and projected density and land use of the area. The commission proposes this amendment to implement TWC, §13.246(c), as amended by the 79th Legislature. In subsection (d)(6) the commission proposes to add as a consideration the financial ability of the applicant to pay for the facilities necessary to provide continuous and adequate service. The commission proposes this amendment to implement TWC, §13.246(c), as amended by the 79th Legislature. Subsection (d)(8) specifies that the commission shall consider the probable improvement in service or lowering in cost of consumers in the area. The commission proposes to amend subsection (d)(8) by adding as a consideration the probable improvement in service or lowering in cost of consumers in the area resulting from granting the certificate or the amendment. The commission proposes this amendment to implement TWC, §13.246(c), as amended by the 79th Legislature. The commission proposes to add a new subsection (d)(9) that would specify that the commission shall consider the effect on the land to be included in the certificated area. The commission proposes this amendment to implement TWC, §13.246(c), as amended by the 79th Legislature.

Section 291.102(e) requires that an applicant utility provide financial assurance to ensure that continuous and adequate service is provided. The commission proposes to add language that will allow an applicant for a certificate or for an amendment to provide a bond or other financial assurance to ensure continuous and adequate service is provided. The commission proposes this amendment to implement TWC, §13.246(c), as amended by the 79th Legislature.

The commission proposes to add a new subsection (h) and a new subsection (i) to §291.102. Subsection (h) would allow a landowner who owns at least 25 acres of land wholly or partially within the proposed service area to exclude some or all of the property from the service area by providing written notice to the commission before the 30th day after the date the landowner receives notice of a new application for a CCN or for an amendment to an existing certificate. The commission proposes this amendment to implement TWC, §13.246(h), as amended by the 79th Legislature. Subsection (i) would specify that a landowner is not entitled to make an election under subsection (h), but is entitled to contest the inclusion of the landowner's property in the proposed service area at a hearing held by the commission regarding the application if the proposed service area is located within the boundaries or extraterritorial jurisdiction of a municipality with a population of more than 500,000 and the municipality or a utility owned by the municipality is the applicant. The commission proposes this amendment to implement TWC, §13.246(i), as amended by the 79th Legislature.

The commission proposes an amendment to §291.104, Applicant, to add new language that would require an applicant to submit information regarding any change in the applicant's financial, managerial, or technical status that arises during the application review process. The commission proposes this amendment to address an applicant's changing circumstances after the application has been submitted to the executive director. If an applicant fails to notify the executive director that information on the application has changed, the commission would not have accurate information on which to base a decision.

The commission proposes an amendment to §291.105, Contents of Certificate of Convenience and Necessity Applications, which lists the contents required in a CCN. The commission proposes to reformat this section into subsections and create a new subsection (a), which would specify that to obtain a CCN, an applicant must submit to the commission an application for a certificate or for an amendment along with the items specified in subsection (a)(1) - (16). The commission proposes this amendment to implement TWC, §13.244, as amended by the 79th Legislature. The commission proposes to delete existing paragraphs (2), (3), (6), (7), and (10). The commission proposes to add new paragraphs (2), (3), (6), (7), and (10) - (16). The proposed new requirements include: a map and description of the proposed service area by a metes and bounds survey certified by a licensed state land surveyor or a registered professional land surveyor; a map and description of the proposed service area by the Texas State Plane Coordinate System or any standard map projection and corresponding metadata; a map and description of the proposed service area by verifiable landmarks, including a road, creek, or railroad line; or a map and description of the proposed service area by a copy of the recorded plat of the area, if it exists, with lot and block number; a map and description of the proposed service area by separate maps showing current and proposed certificated areas for each county in which the retail public utility operates; and a general location map and other maps as requested by the executive director. In §291.105(a)(2)(A), the commission proposes to add the requirement for a map to the description required by TWC, §13.244, because a written description alone is not enough information to accurately locate the proposed service area on the ground. In §291.105(a)(2)(B), the commission proposes to add the alternative standard map projection and corresponding metadata to the Texas State Plane Coordinate System required by TWC, §13.244, to allow flexibility for those who work with digital data and not limit them to a coordinate system. The commission's CCN digital data is currently available to the public in Lambert Conformal Conic projection as defined by the Texas State Mapping System (TSMS), which is the state standard and agency standard. Adding the new language to §291.105(a)(2)(B) allows those entities that wish to use the commission's digital data and projection that flexibility. Metadata is also needed because it provides information about the digital data being submitted, including projection or coordinate system, who created the data, and other pertinent information needed to incorporate into a Geographic Information System (GIS). In §291.105(a)(2)(D), the commission proposes to request a copy of the recorded plat of the area because the lot and block number alone is not enough information to locate the area on the ground. The commission's staff cannot easily obtain county property records, therefore, a copy of the actual plat is needed, as well. If the applicant does not provide a copy of the plat, staff would be required to travel to the counties to research the real property records, resulting in delays in the processing time for CCN applications as well as additional costs to travel and copy those records. The commission also proposes to add new subsection (a)(2)(E) to require separate maps showing current and proposed certificated areas for each county in which the retail public utility operates. The commission proposes to add this requirement to provide additional details to the commission and affected parties regarding the CCN location. The commission will be able to more quickly process applications by having this additional detail. The commission also proposes to add new subsection (a)(2)(F) to identify the general service area being requested. This is especially important when the proposed service areas are prepared by metes and bounds or survey data. Also, the applicant is required to provide a map with the notice and the general location map works best for that purpose and is less costly to reproduce. Finally, the commission proposes to add new subsection (a)(2)(G) to allow staff to request additional maps. This becomes necessary when maps provided by the applicant may not be scaled or may be reduced to the point that they are unreadable or unusable.

The proposed new requirements in subsection (a) would also include a description of any requests for service in the proposed service area; a capital improvements plan, including a budget and estimated time line for construction of all facilities necessary to provide full service to the entire proposed service area; a description of the sources of funding for all facilities; to the extent known, a description of current and projected land uses, including densities; a current financial statement of the applicant; and according to the tax roll of the central appraisal district for each county in which the proposed service area is located, a list of the owners of each tract of land that is at least 50 acres and wholly or partially located within the proposed service area. The commission proposes the revisions to subsection (a) to implement TWC, §13.244, as amended by the 79th Legislature.

The commission proposes to add new §291.105(a)(13) to require if dual certification is being requested, and an agreement between the affected utilities exists, that an applicant must submit an original and three copies of the agreement. The commission proposes this amendment as a method to ensure that all the parties involved in the transaction are made aware of the actions being taken. The commission proposes to add new subsection (a)(14) and (15) to specify what is required for an entity seeking a water CCN or a sewer CCN. The commission proposes these revisions to ensure that the applicant is not making a speculative request and has obtained the necessary approvals to be able to provide utility service. The commission proposes to add new

subsection (a)(16) to request any other item required by the commission or executive director.

The commission proposes to add a new subsection (b) to §291.105. This proposed subsection specifies that the commission may not grant to a retail public utility a CCN for a service area within the boundaries or extraterritorial jurisdiction of a municipality with a population of 500,000 or more without the consent of the municipality. This subsection also outlines the circumstances under which the commission may grant a CCN. The commission proposes this amendment to implement TWC, §13.245, as amended by the 79th Legislature.

The commission proposes to add a new subsection (c) to §291.105. This proposed new subsection would specify that, except as provided elsewhere in the rule, if a municipality extends its extraterritorial jurisdiction to include an area certificated to a retail public utility, the retail public utility may continue and extend service in its area of public convenience and necessity under the rights granted by its certificate and this chapter. The commission proposes this amendment to implement TWC, §13.2451, as amended by the 79th Legislature. This subsection would specify that the commission may not extend a municipality's CCN beyond its extraterritorial jurisdiction without the written consent of the landowner who owns the property in which the certificate is to be extended. Finally, this subsection provides that the portion of any CCN that extends beyond the extraterritorial jurisdiction of the municipality without the consent of the landowner is void on September 1, 2005. The commission proposes this amendment to implement TWC, §13.2451, as amended by the 79th Legislature. The commission also proposes that within 30 days of receipt of a written request by a landowner in an area of a voided certificate, the executive director shall affirm the certificate is modified to reflect the voided portion of the CCN and direct the municipality to prepare and record revised maps of its service area within 30 days of receipt of the affirmation. A municipality that holds a CCN, a portion of which is void under proposed subsection (c), may submit an application to the commission to reinstate all or a portion of such voided area if the municipality has obtained the written consents of all affected landowners. The commission proposes these revisions to identify voided areas, ensure county records remain updated, and give municipalities the opportunity to reinstate the voided areas.

The commission also proposes to add new subsection (c)(3)(A) and (B) to specify that a municipality shall notify the commission prior to filing an eminent domain lawsuit to acquire a substandard water or sewer system and that the municipality, in its sole discretion, shall request that the commission either cancel the CCN of the acquired system or transfer the certificate to the municipality and that the commission shall take such requested action. The commission proposes these amendments to clarify that the CCN is still in operation even though the system has been acquired by eminent domain and that the city must cancel or transfer the CCN so that the portion of the utility being acquired is no longer obligated to provide service.

The commission proposes to add a new subsection (d) to §291.105. This new subsection would specify that if an area is within the boundaries of a municipality, a retail public utility that is certified or entitled to certification can continue and extend service in its area of public convenience and necessity unless a municipality with a population of more than 500,000 exercises its power of eminent domain under §291.105(d)(3). This proposed subsection would also specify that a municipally owned or operated utility may not provide retail water and sewer utility service within the area certificated to another retail public utility without first having obtained from the commission a CCN that includes the areas to be served. Additionally, this subsection specifies that this section may not be construed as limiting the power of municipalities to incorporate or extend their boundaries by annexation. Finally, this subsection would provide that a municipality with a population of more than 500,000 may exercise the power of eminent domain in the manner provided by Texas Property Code, Chapter 21, to acquire a substandard water or sewer system if all the facilities of the system are located entirely within the municipality's boundaries and that the municipality shall pay just and adequate compensation for the property. The commission proposes this amendment to implement TWC, §13.247, as amended by the 79th Legislature.

The commission proposes an amendment to §291.106, Notice for Applications for Certificates of Convenience and Necessity, which outlines the requirements for notice related to applications for CNNs, and is retitled Notice for Applications for Certificates of Convenience and Necessity and Requirements for Recording Maps and Descriptions of Areas Covered by Certificates of Convenience and Necessity, because it will also outline requirements for recording CCN maps and descriptions in the county real property records.

Subsection (b)(2) specifies who must receive notice for applications for an amendment to a CCN. The commission proposes to amend subsection (b)(2) to require that if decertification or dual certification is being requested, the applicant shall provide notice by certified mail to the current CCN holder. The commission proposes this amendment to ensure that if an agreement does not exist between the parties as indicated in §291.105(a)(10), the current CCN holder has been provided notice of the request.

The commission proposes a new subsection (b)(3) to §291.106, which would require the applicant to mail notice to each owner of a tract of land that is at least 50 acres and is wholly or partially included in the area proposed to be certified. The commission proposes this amendment to implement TWC, §13.246(a)(1), as amended by the 79th Legislature. The commission also proposes to renumber the paragraphs in subsection (b) to accommodate proposed new paragraph (3). The commission proposes to add subsection (e) to §291.106, which would define utility service provider as a retail public utility other than a district subject to TWC, §49.452. The commission proposes this amendment to implement TWC, §13.257(a), as amended by the 79th Legislature.

The commission proposes to add subsection (f) to §291.106, which would require a utility service provider to record in the real property records of each county in which the service area or a portion of the service area is located a certified copy of the map of the CCN and of any amendment to the certificate as contained in the commission's records, and a boundary description of the service area and to send evidence to the executive director that it has been recorded. This subsection also lists what is required in the boundary description of the service area and would require the utility service provider to submit to the executive director evidence of the recording. The commission proposes this amendment to implement TWC, §13.257(r), as amended by the 79th Legislature.

The commission proposes to add subsection (g) to §291.106, which would require that the recording required under this section be completed not later than the 31st day after the date a

utility service provider receives a final order from the commission granting an application for a new certificate or for an amendment to a certificate that results in a change in the utility service provider's service area. The commission proposes this amendment to implement TWC, §13.257.

The commission proposes to add subsection (h) to §291.106, which would require the recording required by this section for holders of CCN already in existence as of September 1, 2005, to be completed not later than January 1, 2007. This requirement is from HB 2876.

The commission proposes an amendment to §291.109, Report of Sale, Merger, Etc.; Investigation; Disallowance of Transaction, which requires that on or before the 120th day before the effective date of any sale, acquisition, lease, rental, merger, or consolidation of any water or sewer system required by law to possess a CCN, the utility or water supply or sewer service corporation shall file a written application with the commission and give public notice of the action. The commission proposes to add language to subsection (a) that would specify when the 120-day period begins. Staff has received questions regarding when the 120-day period begins, therefore, to eliminate confusion regarding this date, the commission proposes this change.

The commission proposes an amendment to §291.113, Revocation or Amendment of Certificate, which specifies the criteria for decertification. Subsection (a) allows the commission at any time after notice and hearing to revoke or amend any CCN if certain requirements are met. The commission proposes to amend subsection (a) to explicitly state that on its own motion or the receipt of a petition, the commission at any time after notice and hearing may revoke or amend any CCN with the written consent of the holder or if certain requirements are met. The commission proposes this amendment to implement TWC, §13.254(a), as amended by the 79th Legislature. In subsection (a)(1), the commission proposes to add the language "is incapable of providing service," as a condition that may lead to revocation or amendment of a CCN. The commission proposes this amendment to implement TWC, §13.254(a)(1), as amended by the 79th Legislature.

The commission also proposes new subsection (b) to §291.113, which would provide an alternative to decertification for the owner of a tract of land that is at least 50 acres and that is not in a platted subdivision actually receiving water or sewer service, to petition the commission for expedited release of the area from a CNN so that the area may receive service from another retail public utility. This subsection also lists the items that the petitioner must demonstrate to the commission. The commission proposes this amendment to implement TWC, §13.254(a)(1), as amended by the 79th Legislature.

In §291.113(b)(1)(A), the commission proposes to add to the requirement that the area for which service is sought be shown on a map with descriptions according to §290.105(a)(2). The commission proposes this amendment to ensure that exclusions from CCNs are held to the same mapping requirements as a new CCN or CCN amendment. This will help the commission ensure the accuracy of the CCN data.

The commission proposes in §291.113 new subsection (c) to specify the circumstances under which a landowner may not petition for expedited release from a CCN, but instead may contest the involuntary certification of its property. The commission proposes new subsection (d) to specify the time frame and manner in which the commission or executive director must take action on the petition filed under proposed subsection (b); and new subsection (e) to specify that Texas Government Code, Chapter 2001 does not apply to any petition filed under subsection (b). The commission proposes these revisions to implement TWC, §13.254(a-2) - (a-4), as amended by the 79th Legislature. The commission also proposes to add after the word "rules" in subsection (e), the words, "under §50.139 of this title" to specify the rules that relate to motions to overturn. Finally, the commission proposes to reletter the existing subsections to accommodate the new subsections.

Section 291.113(e), which specifies when the determination of the amount of monetary compensation will be made, is redesignated as §291.113(i). The commission proposes to add a requirement to §291.113(i) that the monetary amount of compensation will be determined not later than the 90th day after the date on which a retail public utility notifies the commission of its intent to provide service to the decertified area. The commission proposes this amendment to implement TWC, §13.254(a-3), as amended by the 79th Legislature.

Section 291.113(f), which specifies that the monetary amount shall be determined by a qualified individual or firm serving as an independent appraiser agreed upon by the decertified retail public utility and the retail public utility seeking to serve the areas, is redesignated as §291.113(j). The commission proposes to add new paragraphs (1) and (2) to subsection (j) to outline the criteria for using an independent appraiser if the retail public utilities cannot agree on an independent appraiser. These provisions implement TWC, §13.254.

Section 291.113(g), which specifies that the value of real property will be determined according to the standards in Texas Property Code, Chapter 21, and that the value of personal property will be determined using factors listed in this subsection, is redesignated as §291.113(k). The commission proposes to amend subsection (k) by specifying that the value of the real property will be based on real property that is owned and used by the retail public utility for its facilities. The commission also proposes to delete the language that specifies that compensation will be for the taking, damaging, or loss of personal property, including the retail public utility's business. The commission also proposes to delete the words "at a minimum." Additionally, the commission proposes to delete the following factors used to ensure that the compensation to a retail public utility is just and adequate: the impact on the existing indebtedness of the retail public utility and its ability to repay that debt; the expenses of the retail public utility; and factors relevant to maintaining the current financial integrity of the retail public utility. The commission also proposes to add the following new factor to ensure that the compensation to a retail public utility is just and adequate: the amount of the retail public utility's debt allocable for service to the area in question. Additionally, the commission proposes to modify the factor "the impact on future revenues" by adding "lost from existing customers." The commission proposes this amendment to implement TWC, §13.254(g), as amended by the 79th Legislature.

The commission also proposes to delete existing subsections (h) - (m) and to add new subsections (l) - (p) in §291.113. Proposed new subsection (l) would allow the commission to order a retail public utility that has lost certificated service rights to another public utility seeking to provide service to a decertified area to serve the entire service area of the retail public utility that is being

decertified and to transfer the entire CCN of a partially decertified retail public utility to the retail public utility seeking to provide service to the decertified area. The commission proposes this amendment to implement TWC, §13.2551(a), as amended by the 79th Legislature.

Proposed new subsection (m) would require the commission to order service to the entire area under subsection (l) if the commission finds that the decertified retail public utility will be unable to provide continuous and adequate service at an affordable cost to the remaining customers. The commission proposes this amendment to implement TWC, §13.2551(b), as amended by the 79th Legislature.

Proposed new subsection (n) would specify that the commission require the retail public utility seeking to provide service to the decertified area to provide continuous and adequate service to the remaining customers at a cost comparable to the cost of that service to its other customers and would establish the terms under which the service must be provided. This proposed subsection also lists what the terms may include. The commission proposes this amendment to implement TWC, §13.2551(c), as amended by the 79th Legislature.

Proposed new subsection (o) would require that the retail public utility seeking decertification not charge the affected customers any transfer fee or other fee to obtain service other than the retail public utility's usual and customary rates for monthly service or the interim rates set by the commission, if applicable. The commission proposes this amendment to implement TWC, §13.2551(d), as amended by the 79th Legislature.

Proposed new subsection (p) states that the commission may not order compensation to the decertificated retail public utility if service to the entire service area is ordered under this section. The commission proposes this amendment to implement TWC, §13.2551(e), as amended by the 79th Legislature. The commission added the word "public" between "retail" and "utility" to clarify the type of utility.

The commission proposes an amendment to §291.115, Cessation of Operations by a Retail Public Utility, which specifies what a utility that holds or is required to hold a CCN must do to discontinue, reduce, or impair utility service. Subsection (i) lists the factors that the commission must consider when determining whether to authorize a utility to discontinue, reduce, or impair service. In subsection (i)(1), the commission proposes to add as a factor the effect on landowners. In subsection (i)(8), the commission proposes to add as a factor the feasibility of landowners obtaining services from alternate sources. The commission proposes these changes to ensure that landowners, as defined in §291.3, are considered when the commission is making its decision.

The commission proposes an amendment to §291.117, Contracts Valid and Enforceable, which specifies that contracts between retail public utilities designating areas to be served and customers to be served are valid and enforceable when approved by the commission after notice and hearing and are incorporated into the CCNs. The commission proposes to add language to subsection (a) providing that this provision does not negate the requirements of TWC, §13.301. The commission also proposes to add a new subsection (b) to specify how retail public utilities may request approval of contracts. The commission has received contracts without justification, notice, and filing fees, which can slow down processing. The commission proposes these revisions to avoid delays in processing by clarifying what is needed for processing.

The commission proposes an amendment to §291.119, Filing of Maps, which requires that at the request of the commission each utility and water supply or sewer service corporation shall file with the commission a map or maps showing all its facilities and illustrating separately facilities for production, transmission, and distribution of its services, and that each certificated retail public utility shall file with the commission a map or maps showing any facilities, customers, or area currently being served outside its certificated areas. The commission proposes to amend this section to require each public utility and water supply or sewer service corporation to file this information without being requested to do so by the commission. The commission proposes this amendment to implement TWC, §13.244(b), as amended by the 79th Legislature.

The commission proposes new §291.120, Single Certification in Incorporated or Annexed Areas, which would specify that in the event an area is incorporated or annexed by a municipality, either before or after the effective date of this section, the municipality and a retail public utility that provides water or sewer service to all or part of the area under a CCN may agree, in writing, that all or part of the area may be served by a municipally owned utility, by a franchised utility, or by the retail public utility. This section contains the time frames and manner in which a single certification must be carried out. This new section is proposed to implement TWC, §13.255.

In addition to public comment on the proposed rules, the commission expressly requests public comment on the following issues: 1) whether the executive director, upon written request of a landowner within the void portion of a municipality's CCN, should simply affirm that the portion of the CCN is void as proposed in the rules, or should the executive director issue an order modifying the city's CCN to reflect the portion of the CCN which is void; 2) whether, and in what manner, a proposed district should qualify as an alternate retail public utility for the purpose of a landowner filing a petition for expedited release from a CCN; 3) whether, and if so, when a retail public utility that may be compensated pursuant to decertification should be required to notify its lenders that the commission will be determining whether to award compensation for loss of service territory; 4) whether a lender of a retail public utility that may be compensated pursuant to decertification should be required to provide the commission information on the amount of money necessary, if any, to avoid impairment of the debt allocable to the area in question; and 5) whether the rules should provide more specific time lines for the decertification process initiated by landowners or retail public utilities to ensure that compensation is determined within 90 days.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Nina Chamness, Analyst, Strategic Planning and Grants Management Section, determined that for the first five-year period the proposed rules are in effect, minor fiscal implications are anticipated for the agency and other units of state government. Fiscal implications are also anticipated for local governments, water supply corporations, and investor-owned utilities as a result of administration or enforcement of the proposed rules. The proposed rulemaking would amend certain sections of this chapter concerning CCNs.

The proposed rules would implement provisions of HB 2876 and SB 425, in addition to clarifying existing rule language. HB 2876 requires the revision of the criteria for obtaining, amending, transferring, and decertifying CCNs for water and sewer service as well as requiring CCN holders to file a copy of their service area maps in county deed records. SB 425 changes the definition of affected county in TWC, §16.341, by adding "that is located in whole or part within 100 miles of an international border and contains the majority of the area of a municipality with a population of more than 250,000." Other changes under the proposed rules will clarify CCN definitions, requirements, and procedures and give regulated entities more guidance regarding CCN actions.

Impact on Agency Revenue

The proposed rules would increase agency revenue in the Water Resource Management Account by charging a $100 fee to approve contracts between retail public utilities and customers, under TWC, §13.248. Staff estimates that it will receive ten to 20 of these contracts per year, and revenue may increase by $1,000 to $2,000 annually.

Impact on Local Governments

Implementation of the requirements of HB 2876 will increase application costs for some local governments. Costs are expected to increase for mailing notices, obtaining consent from landowners, exercising rights of eminent domain, and putting survey data into an acceptable GIS format. These increases could range from $1,000 to $10,000 depending on the applicant and the type of application submitted. Application costs under the current rules range from $1,000 to $20,000 per application. Local governments hold approximately 720 water CCNs and 555 sewer CCNs. Staff expects to receive ten to 20 CCN applications per month from all CCN holders, which include local governments, water supply corporations, and investor-owned utilities. It is estimated that approximately 42% of CCN applications will be filed by local governments. Local governments that hold CCNs will see increased costs when applying to obtain, amend, transfer, or decertify CCNs as well as having land excluded from CCN areas. Statewide, total CCN application costs for local governments could increase as much as $50,000 to $1 million per year.

When decertifying a CCN or excluding land from a CCN area, local governments may have additional compensation costs to pay landowners or utilities. These costs are expected to vary widely and be determined on a case-by-case basis. If a CCN case is contested, there may be additional hearing costs including attorney and consultant fees. These also are expected to vary widely on a case-by-case basis. Costs for copying and filing maps in county deed records will also vary across the state.

PUBLIC BENEFITS AND COSTS

Ms. Chamness also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be compliance with state law and more clear, concise requirements pertaining to CCNs, resulting in higher rates of compliance with agency rules.

Nonprofit water supply corporations and investor-owned utilities hold approximately 1,418 water CCNs and 195 sewer CCNs. These entities will see the same $1,000 to $10,000 increase in application costs as those experienced by local governments. It is estimated that 18% of CCN applications are filed by water supply corporations and 5% are filed by large investor-owned utilities. Total CCN application costs statewide for these entities could increase as much as $28,000 to $552,000 per year.

Water supply corporations and investor-owned utilities may incur additional compensation costs to pay landowners or other utilities if their land is excluded from a CCN or if a CCN is decertified. These costs are expected to vary widely and be determined on a case-by-case basis. If a CCN case is contested, there may be additional hearing costs including attorney and consultant fees, which will also vary on a case-to-case basis. Costs for copying and filing maps in county deed records will also vary across the state.

Some landowners that have their land excluded from a utility's CCN area may experience cost savings if they can obtain less expensive water or sewer service from another entity. The amount of savings will vary depending on the circumstances involved.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

Adverse fiscal implications may be anticipated for small or micro-businesses. A small business is defined as having fewer than 100 employees or less than $1 million in annual gross receipts. A micro-business is defined as having no more than 20 employees. It is estimated that 35% of the CCN applications filed each year will be filed by small investor-owned utilities. It is not known how many investor-owned utilities could be classified as micro-businesses. CCN application costs are expected to increase by $1,000 to $10,000 per application and approximately ten to 12 CCN applications per month are expected to be filed. Statewide these costs could be as much as $42,000 to $840,000 per year. The annual cost per employee for a small investor-owned utility to file a CCN application is estimated to increase as much as $420 to $8,400.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the Texas Administrative Procedure Act. A major environmental rule means "a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state." Here, the primary specific intent of the proposed rulemaking is to implement HB 2876 of the 79th Legislature, which makes changes to rules governing CCNs for water and sewer service. A secondary intent of the proposed rulemaking is to implement portions of SB 425 of the 79th Legislature, which changes the definition of affected county. Generally, these proposed changes are intended to impact only the economic regulation of water and sewer utilities and the prevention of substandard housing in the border areas. The proposed rules are not intended to have any impact on environmental regulation. Furthermore, the proposed rulemaking does not meet any of the four applicability requirements listed in Texas Government

Code, §2001.0225(a). The proposed rules: 1) are specifically required by state law, namely TWC, Chapter 13; 2) do not exceed the express requirements of the TWC; 3) do not exceed a requirement of federal delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program where there is no federal delegation regarding CCNs or border-area connection of water and sewer service and there is no agreement or contract between the federal government and the State of Texas or commission regarding CCNs or border-area connection of water and sewer service; and 4) will not be adopted solely under the general powers of the commission.

Therefore, the proposed rulemaking does not constitute a major environmental rule, and thus is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225. The commission invites public comment on this draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated these proposed rules and performed an assessment of whether these proposed rules constitute a takings under Texas Government Code, Chapter 2007. The primary purpose of the proposed rulemaking is to make changes to rules governing CCNs for water and sewer service. A secondary intent of the proposed rulemaking is to change the definition of affected county to be consistent with the TWC. The proposed rules would substantially advance these stated purposes by revising the criteria for obtaining, amending, transferring, and decertifying CCNs for water and sewer service and amending the CCN mapping requirements. The proposed rules would also expand the definition of affected county to include a county within 100 miles of an international border, which also contains a municipality with a population greater than 250,000.

Promulgation and enforcement of these proposed rules will constitute neither a statutory nor a constitutional taking of private real property. The proposed CCN regulations do not adversely affect a landowner's rights in private real property, in whole or in part, temporarily or permanently, because this rulemaking does not burden nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. More specifically, these rules implement the changes to the TWC mandated by HB 2876 and SB 425, enacted by the 79th Legislature. There are no burdens imposed on private real property by the enactment of these rules. Therefore, the proposed rules do not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rules are not subject to the Texas Coastal Management Program.

ANNOUNCEMENT OF HEARING

A public hearing on this proposal will be held in Austin on October 25, 2005, at 10:00 a.m. at the Texas Commission on Environmental Quality complex located at 12100 Park 35 Circle in Building C, Room 131E. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact Patricia Durón, Office of Legal Services at (512) 239-6087. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to Patricia Durón, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Project Number 2005-036-291-PR. Comments must be received by 5:00 p.m., October 31, 2005. The proposed rules may be viewed on the commission's Web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html*. For further information, please contact Michelle Abrams, Utilities and Districts Section, at (512) 239-6014.

SUBCHAPTER A. GENERAL PROVISIONS

30 TAC §§291.3, 291.5, 291.7

STATUTORY AUTHORITY

The amendments are proposed under TWC, §5.102, which provides the commission the general powers to carry out duties under TWC and §5.103, which provides the commission with the authority to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state. In addition, TWC, §13.041 states that the commission may regulate and supervise the business of every water and sewer utility within its jurisdiction and may do all things, whether specifically designated in TWC, Chapter 13 or implied in TWC, Chapter 13, necessary and convenient to the exercise of this power and jurisdiction. Further, TWC, §13.041 also states that the commission shall adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules governing practice and procedure before the commission.

The proposed amendments implement TWC, §§13.002, 13.241, 13.242, 13.244, 13.245, 13.2451, 13.246, 13.247, 13.254, 13.255, 13.2551, 13.257, and 16.341.

§291.3. Definitions of Terms.

The following words and terms, when used in this chapter, [~~shall~~] have the following meanings, unless the context clearly indicates otherwise.

(1) (No change.)

(2) Affected county--A county to which Local Government Code, Chapter 232, Subchapter B, applies [~~any part of which is within 50 miles of an international border~~].

(3) Affected person--Any landowner within an area for which an application for a new or amended certificate of public convenience and necessity is filed; any retail public utility affected by any action of the regulatory authority; any person or corporation, whose utility service or rates are affected by any proceeding before the regulatory authority; or any person or corporation that is a competitor of a retail public utility with respect to any service performed by the retail public utility or that desires to enter into competition.

(4) - (18) (No change.)

(19) Landowner--An owner or owners of a tract of land including multiple owners of a single deeded tract of land.

(20) [~~(19)~~] License--The whole or part of any commission permit, certificate, registration, or similar form of permission required by law.

(21) [~~(20)~~] Licensing--The commission process respecting the granting, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license, certificates of convenience and necessity, or any other authorization granted by the commission in accordance with [~~pursuant to~~] its authority under the Texas Water Code.

(22) [~~(21)~~] Main--A pipe operated by a utility service provider that [~~which~~] is used for transmission or distribution of water or to collect or transport sewage.

(23) [~~(22)~~] Mandatory water use reduction--The temporary reduction in the use of water imposed by court order, government agency, or other authority with appropriate jurisdiction. This does not include water conservation measures that [~~which~~] seek to reduce the loss or waste of water, improve the efficiency in the use of water, or increase the recycling or reuse of water so that a water supply is made available for future or alternative uses.

(24) [~~(23)~~] Member--A person who holds a membership in a water supply or sewer service corporation and who is a record owner of a fee simple title to property in an area served by a water supply or sewer service corporation, or a person who is granted a membership and who either currently receives or will be eligible to receive water or sewer utility service from the corporation. In determining member control of a water supply or sewer service corporation, a person is entitled to only one vote regardless of the number of memberships the person owns.

(25) [~~(24)~~] Membership fee--A fee assessed each water supply or sewer service corporation service applicant that [~~which~~] entitles the applicant to one connection to the water or sewer main of the corporation. The amount of the fee is generally defined in the corporation's bylaws and payment of the fee provides for issuance of one membership certificate in the name of the applicant, for which certain rights, privileges, and obligations are allowed under [~~pursuant to~~] said bylaws. For purposes of Texas Water Code, §13.043(g), a membership fee is a fee not exceeding approximately 12 times the monthly base rate for water or sewer service or an amount that does not include any materials, labor, or services required for or provided by the installation of a metering device for the delivery of service, capital recovery, extension fees, buy-in fees, impact fees, or contributions in aid of construction.

(26) [~~(25)~~] Municipality--A city, existing, created, or organized under the general, home rule, or special laws of this state.

(27) [~~(26)~~] Municipally owned [~~Municipally-owned~~] utility--Any retail public utility owned, operated, and controlled by a municipality or by a nonprofit corporation whose directors are appointed by one or more municipalities.

(28) [~~(27)~~] Person--Any natural person, partnership, cooperative corporation, association, or public or private organization of any character other than an agency or municipality.

(29) [~~(28)~~] Physician--Any public health official, including, but not limited to, medical doctors, doctors of osteopathy, nurse practitioners, registered nurses, and any other similar public health official.

(30) [~~(29)~~] Point of use or point of ultimate use--The primary location where water is used or sewage is generated; for example, a residence or commercial or industrial facility.

(31) [~~(30)~~] Potable water--Water that is used for or intended to be used for human consumption or household use.

(32) [~~(31)~~] Premises--A tract of land or real estate including buildings and other appurtenances thereon.

(33) [~~(32)~~] Public utility--The definition of public utility is that definition given to water and sewer utility in this subchapter.

(34) [~~(33)~~] Purchased sewage treatment--Sewage treatment purchased from a source outside the retail public utility's system to meet system requirements.

(35) [~~(34)~~] Purchased water--Raw or treated water purchased from a source outside the retail public utility's system to meet system demand requirements.

(36) [~~(35)~~] Rate--Includes every compensation, tariff, charge, fare, toll, rental, and classification or any of them demanded, observed, charged, or collected, whether directly or indirectly, by any retail public utility, or water or sewer service supplier, for any service, product, or commodity described in [~~the~~] Texas Water Code, §13.002(23), and any rules, regulations, practices, or contracts affecting any such compensation, tariff, charge, fare, toll, rental, or classification.

(37) [~~(36)~~] Ratepayer--Each person receiving a separate bill shall be considered as a ratepayer, but no person shall be considered as being more than one ratepayer notwithstanding the number of bills received. A complaint or a petition for review of a rate change shall be considered properly signed if signed by any person, or spouse of any such person, in whose name utility service is carried.

(38) [~~(37)~~] Reconnect fee--A fee charged for restoration of service where service has previously been provided. It may be charged to restore service after disconnection for reasons listed in §291.88 of this title (relating to Discontinuance of Service) or to restore service after disconnection at the customer's request.

(39) [~~(38)~~] Retail public utility--Any person, corporation, public utility, water supply or sewer service corporation, municipality, political subdivision or agency operating, maintaining, or controlling in this state facilities for providing potable water service or sewer service, or both, for compensation.

(40) [~~(39)~~] Retail water or sewer utility service--Potable water service or sewer service, or both, provided by a retail public utility to the ultimate consumer for compensation.

(41) [~~(40)~~] Safe drinking water revolving fund--The fund established by the Texas Water Development Board to provide financial assistance in accordance with the federal [~~Federal~~] program established under [~~pursuant to~~] the provisions of the Safe Drinking Water Act and as defined in Texas Water Code, §15.602.

(42) [~~(41)~~] Service--Any act performed, anything furnished or supplied, and any facilities or lines committed or used by a retail public utility in the performance of its duties under the Texas Water Code to its patrons, employees, other retail public utilities, and the public, as well as the interchange of facilities between two or more retail public utilities.

(43) [~~(42)~~] Service line or pipe--A pipe connecting the utility service provider's main and the water meter or for sewage, connecting the main and the point at which the customer's service line is connected, generally at the customer's property line.

(44) [~~(43)~~] Sewage--Ground garbage, human and animal, and all other waterborne type waste normally disposed of through the sanitary drainage system.

(45) [~~(44)~~] Standby fee--A charge imposed on unimproved property for the availability of water or sewer service when service is not being provided.

(46) [~~(45)~~] Tap fee--A tap fee is the charge to new customers for initiation of service where no service previously existed. A tap fee for water service may include the cost of physically tapping the water main and installing meters, meter boxes, fittings, and other materials and labor. A tap fee for sewer service may include the cost of physically tapping the main and installing the utility's service line to the customer's property line, fittings, and other material and labor. Water or sewer taps may include setting up the new customer's account, and allowances for equipment and tools used. Extraordinary expenses such as road bores and street crossings and grinder pumps may be added if noted on the utility's approved tariff. Other charges, such as extension fees, buy-in fees, impact fees, or contributions in aid of construction (CIAC) are not to be included in a tap fee.

(47) [~~(46)~~] Tariff--The schedule of a retail public utility containing all rates, tolls, and charges stated separately by type or kind of service and the customer class, and the rules and regulations of the retail public utility stated separately by type or kind of service and the customer class.

(48) [~~(47)~~] Temporary water rate provision--A provision in a utility's tariff that allows a utility to adjust its rates in response to mandatory water use reduction.

(49) [~~(48)~~] Test year--The most recent 12-month period for which representative operating data for a retail public utility are available. A utility rate filing must be based on a test year that ended less than 12 months before the date on which the utility made the rate filing.

(50) [~~(49)~~] Utility--The definition of utility is that definition given to water and sewer utility in this subchapter.

(51) [~~(50)~~] Water and sewer utility--Any person, corporation, cooperative corporation, affected county, or any combination of those persons or entities, other than a municipal corporation, water supply or sewer service corporation, or a political subdivision of the state, except an affected county, or their lessees, trustees, and receivers, owning or operating for compensation in this state equipment or facilities for the production, transmission, storage, distribution, sale, or provision of potable water to the public or for the resale of potable water to the public for any use or for the collection, transportation, treatment, or disposal of sewage or other operation of a sewage disposal service for the public, other than equipment or facilities owned and operated for either purpose by a municipality or other political subdivision of this state or a water supply or sewer service corporation, but does not include any person or corporation not otherwise a public utility that furnishes the services or commodity only to itself or its employees or tenants as an incident of that employee service or tenancy when that service or commodity is not resold to or used by others.

(52) [~~(51)~~] Water use restrictions--Restrictions implemented to reduce the amount of water that [~~which~~] may be consumed by customers of the system due to emergency conditions or drought.

(53) [~~(52)~~] Water supply or sewer service corporation--Any nonprofit[~~,~~] corporation organized and operating under [~~the~~] Texas Water Code, Chapter 67, that provides potable water or sewer service for compensation and that has adopted and is operating in accordance with by-laws or articles of incorporation which ensure that it is member-owned and member-controlled [~~member controlled~~]. The term does not include a corporation that provides retail water or sewer service to a person who is not a member, except that the corporation may provide retail water or sewer service to a person who is not a member if the person only builds on or develops property to sell to another and the service is provided on an interim basis before the property is sold. For purposes of this chapter, to qualify as member-owned, member-controlled a water supply or sewer service corporation must also meet the following conditions.

(A) All members of the corporation meet the definition of "member" under this section, and all members are eligible to vote in those matters specified in the articles and bylaws of the corporation. Payment of a membership fee in addition to other conditions of service may be required provided that all members have paid or are required to pay the membership fee effective at the time service is requested.

(B) Each member is entitled to only one vote regardless of the number of memberships owned by that member.

(C) A majority of the directors and officers of the corporation must be members of the corporation.

(D) The corporation's by-laws include language indicating that the factors specified in subparagraphs (A) - (C) of this paragraph are in effect.

(54) [~~(53)~~] Wholesale water or sewer service--Potable water or sewer service, or both, provided to a person, political subdivision, or municipality who is not the ultimate consumer of the service.

§291.5. Submission of Documents.

All documents to be considered by the executive director under this chapter shall be submitted to the Utilities and Districts Section, Water Supply Division [~~Utility Rates and Services Section, Water Utilities Division~~], Mail Code 153, Texas Commission on Environmental Quality [~~Texas Natural Resource Conservation Commission~~], P.O. Box 13087, Austin, Texas 78711-3087. Unless otherwise provided in this chapter, an original and four copies shall be submitted.

§291.7. Filing Fees.

Each application, petition, or complaint that [~~which~~] is intended to institute a proceeding before the commission shall be accompanied by the appropriate filing fee as required by [~~the~~] Texas Water Code, §5.701 [~~§5.235~~] and §13.4521, and costs of mailing notice, if any.

(1) A rate change application filed with the commission under [~~the~~] Texas Water Code, §13.187, must be accompanied by the appropriate filing fee as follows:

(A) - (D) (No change.)

(2) An application for a certificate of public convenience and necessity under [~~the~~] Texas Water Code, §13.244, must be accompanied by an application fee of $100.

(3) An application for sale, assignment, or lease of a certificate of convenience and necessity under [~~the~~] Texas Water Code, §13.251, or notice of intent to sell, assign, lease, or rent a water or sewer system under [~~the~~] Texas Water Code, §13.301, must be accompanied by the appropriate fee as follows (one fee will suffice for both applications):

(A) - (D) (No change.)

(4) The fees required in paragraphs (1) - (3) of this section are in lieu of the $100 filing fee required by [~~the~~] Texas Water Code, §5.701 [~~§5.235~~], which should accompany all other applications and petitions. A filing fee is not required for appeals or complaints filed under [~~the~~] Texas Water Code, §13.043(b) or §13.187(e) [~~§13.187(b)~~].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 16, 2005.

TRD-200504101
Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: October 30, 2005
For further information, please call: (512) 239-6087

♦ ♦ ♦

SUBCHAPTER G. CERTIFICATES OF CONVENIENCE AND NECESSITY

30 TAC §§291.101, 291.102, 291.104 - 291.106, 291.109, 291.113, 291.115, 291.117, 291.119, 291.120

STATUTORY AUTHORITY

The amendments and new section are proposed under TWC, §5.102, which provides the commission the general powers to carry out duties under TWC and §5.103, which provides the commission with the authority to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state. In addition, TWC, §13.041 states that the commission may regulate and supervise the business of every water and sewer utility within its jurisdiction and may do all things, whether specifically designated in TWC, Chapter 13 or implied in TWC, Chapter 13, necessary and convenient to the exercise of this power and jurisdiction. Further, TWC, §13.041 also states that the commission shall adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules governing practice and procedure before the commission.

The proposed amendments and new section implement TWC, §§13.002, 13.241, 13.242, 13.244, 13.245, 13.2451, 13.246, 13.247, 13.254, 13.255, 13.2551, 13.257, and 16.341.

§291.101. Certificate Required.

(a) - (c) (No change.)

(d) A supplier of wholesale water or sewer service may not require a purchaser to obtain a certificate of public convenience and necessity if the purchaser is not otherwise required by this chapter to obtain the certificate.

§291.102. Criteria for Considering and Granting Certificates or Amendments.

(a) In determining whether to grant or amend a [~~new~~] certificate of public convenience and necessity, the commission shall ensure that the applicant possesses the financial, managerial, and technical capability to provide continuous and adequate service.

(1) For water utility service, the commission shall ensure that the applicant is capable of providing drinking water that meets the requirements of Texas Health and Safety Code, Chapter 341 and commission rules and has access to an adequate supply of water.

(2) (No change.)

(b) (No change.)

(c) The commission may approve applications and grant or amend a certificate only after finding that the certificate or amendment is necessary for the service, accommodation, convenience, or safety of the public. The commission may issue or amend the certificate as applied for, or refuse to issue it, or issue it for the construction of a portion only of the contemplated system or facility or extension thereof, or for the partial exercise only of the right or privilege and may impose special conditions necessary to ensure that continuous and adequate service is provided.

(d) In considering whether to grant or amend a certificate, the commission shall also consider:

(1) (No change.)

(2) the need for additional service in the requested area, including whether any landowners, prospective landowners, tenants, or residents have requested service, which may include:[~~;~~]

(A) economic needs;

(B) environmental needs;

(C) written application or requests for service; or

(D) reports or market studies demonstrating growth in the area;

(3) the effect of the granting of a certificate or of an amendment on the recipient of the certificate or amendment, on the landowners in the area, and on any retail public utility of the same kind already serving the proximate area, including, but not limited to, regionalization, compliance history, or economic effects;

(4) the ability of the applicant to provide adequate service, including meeting the standards of the commission, taking into consideration the current and projected density and land use of the area;

(5) (No change.)

(6) the financial ability of the applicant to pay for the facilities necessary to provide continuous and adequate service and the financial stability of the applicant, including, if applicable, the adequacy of the applicant's debt-equity ratio;

(7) environmental integrity; [~~and~~]

(8) the probable improvement in service or lowering of cost to consumers in that area resulting from the granting of the certificate or amendment; and[~~.~~]

(9) the effect on the land to be included in the certificated area.

(e) The commission may require an applicant for a certificate or for an amendment [~~utility~~] to provide a bond or other financial assurance to ensure that continuous and adequate utility service is provided. The commission shall set the amount of financial assurance. The form of the financial assurance will be as specified in Chapter 37, Subchapter O of this title (relating to Financial Assurance for Public Drinking Water Systems and Utilities).

(f) (No change.)

(g) For two or more retail public utilities that apply for a certificate of convenience and necessity to provide water or sewer utility service to an uncertificated area located in an economically distressed area as defined in Texas Water Code, §15.001, the executive director shall conduct an assessment of the applicants to determine which applicant is more capable financially, managerially and technically of providing continuous and adequate service. The assessment shall be conducted after the preliminary hearing and only if the parties are unable to resolve the service area dispute. The assessment shall be conducted using a standard form designed by the executive director and will include:

(1) - (10) (No change.)

(11) planning reports or studies by the applicant to serve the proposed area.[~~;~~]

(h) Except as provided by subsection (i) of this section, a landowner who owns a tract of land that is at least 25 acres and that is wholly or partially located within the proposed service area may elect to exclude some or all of the landowner's property from the proposed service area by providing written notice to the commission before the 30th day after the date the landowner receives notice of a new application for a certificate of public convenience and necessity or for an amendment to an existing certificate of public convenience and necessity. The landowner's election is effective without a further hearing or other process by the commission. If a landowner makes an election under this subsection, the application shall be modified so that the electing landowner's property is not included in the proposed service area.

(i) A landowner is not entitled to make an election under subsection (h) of this section but is entitled to contest the inclusion of the landowner's property in the proposed service area at a hearing held by the commission regarding the application if the proposed service area is located within the boundaries or extraterritorial jurisdiction of a municipality with a population of more than 500,000 and the municipality or a utility owned by the municipality is the applicant.

§291.104. Applicant.

(a) It is the responsibility of the owner of the utility or the president of the board of directors [~~President of the Board of Directors~~] or designated representative of the water supply or sewer service corporation, affected county, district, or municipality to submit an application for a certificate of convenience and necessity.

(b) The applicant shall have the continuing duty to submit information regarding any change in the applicant's financial, managerial, or technical status that arises during the application review process.

§291.105. Contents of Certificate of Convenience and Necessity Applications.

(a) Application. To obtain a certificate of public convenience and necessity (CCN) or an amendment to a certificate, a public utility or water supply or sewer service corporation shall submit to the commission an application for a certificate or for an amendment as provided by this section. Applications for CCNs [~~certificates of convenience and necessity~~] or for an amendment to a certificate must [~~shall~~] contain an original and three copies of the following materials, unless otherwise specified in the application:

(1) the appropriate application form prescribed by the commission, completed as instructed and properly executed;

(2) a map and description of the proposed service area by: [~~a State Highway County Map, or equivalent, which clearly defines the proposed service area of the applicant. Service boundaries shall conform to verifiable landmarks such as roads, creeks, and railroads. Separate maps shall be filed for each county in which the retail public utility operates;~~]

(A) metes and bounds survey certified by a licensed state land surveyor or a registered professional land surveyor;

(B) the Texas State Plane Coordinate System or any standard map projection and corresponding metadata;

(C) verifiable landmarks, including a road, creek, or railroad line; or

(D) a copy of the recorded plat of the area, if it exists, with lot and block number; and

(E) separate maps showing current and proposed certificated areas for each county in which the retail public utility operates;

(F) a general location map; and

(G) other maps as requested by the executive director;

(3) a description of any requests for service in the proposed service area; [~~other more detailed maps as may be specified in the application form;~~]

(4) [~~an original and three copies of~~] any evidence as required by the commission to show that the applicant has received the necessary consent, franchise, permit, or license from the proper municipality or other public authority;

(5) an explanation of the applicant's reasons for contending that issuance of a certificate as requested is necessary for the service, accommodation, convenience, or safety of the public;

(6) a capital improvements plan, including a budget and estimated time line for construction of all facilities necessary to provide full service to the entire proposed service area, keyed to maps showing where such facilities will be located to provide service; [~~a schedule for the ultimate construction of all proposed facilities, keyed to maps showing where such facilities will be located to provide service;~~]

(7) a description of the sources of funding for all facilities; [~~source of funding for facilities;~~]

(8) for utilities or water supply or sewer service corporation previously exempted for operations or extensions in progress as of September 1, 1975, a list of all current customer locations which were being served on September 1, 1975, and an accurate location of them on the maps submitted. Current customer locations which were not being served on that date should also be located on the same map in a way which clearly distinguishes the two groups;

(9) disclosure of all affiliated interests as defined by §291.3 of this title (relating to Definition of Terms); or

(10) to the extent known, a description of current and projected land uses, including densities; [~~any other information that the executive director may reasonably require.~~]

(11) a current financial statement of the applicant;

(12) according to the tax roll of the central appraisal district for each county in which the proposed service area is located, a list of the owners of each tract of land that is:

(A) at least 50 acres; and

(B) wholly or partially located within the proposed service area; and

(13) if dual certification is being requested, and an agreement between the affected utilities exists, a copy of the agreement;

(14) for a water CCN, a copy of the approval letter for the commission-approved plans and specifications or commission-approved preliminary engineering reports unless §290.39(j)(1)(D) of this title (relating to General Provisions) applies;

(15) for a sewer CCN, a wastewater permit or proof that a wastewater permit application has been filed with the commission; and

(16) any other item required by the commission or executive director.

(b) Application within the municipal boundaries or extraterritorial jurisdiction of certain municipalities.

(1) This subsection applies only to a municipality with a population of 500,000 or more.

(2) Except as provided by paragraph (3) of this subsection, the commission may not grant to a retail public utility a CCN for a service area within the boundaries or extraterritorial jurisdiction of a municipality without the consent of the municipality. The municipality may not unreasonably withhold the consent. As a condition of the consent, a municipality may require that all water and sewer facilities be designed and constructed in accordance with the municipality's standards for facilities.

(3) If a municipality has not consented under paragraph (2) of this subsection before the 180th day after the date the municipality receives the retail public utility's application, the commission shall grant the CCN without the consent of the municipality if the commission finds that the municipality:

(A) does not have the ability to provide service; or

(B) has failed to make a good faith effort to provide service on reasonable terms and conditions.

(4) A commitment described by paragraph (3)(B) of this subsection must provide that the construction of service facilities will begin within one year and will be substantially completed within two years after the date the retail public utility's application was filed with the municipality.

(5) If the commission makes a decision under paragraph (3) of this subsection regarding the granting of a CCN without the consent of the municipality, the municipality or the retail public utility may appeal the decision to the appropriate state district court.

(c) Extension beyond extraterritorial jurisdiction.

(1) Except as provided by paragraph (2) of this subsection, if a municipality extends its extraterritorial jurisdiction to include an area certificated to a retail public utility, the retail public utility may continue and extend service in its area of public convenience and necessity under the rights granted by its certificate and this chapter.

(2) The commission may not extend a municipality's CCN beyond its extraterritorial jurisdiction without the written consent of the landowner who owns the property in which the certificate is to be extended. The portion of any CCN that extends beyond the extraterritorial jurisdiction of the municipality without the consent of the landowner is void on September 1, 2005. Within 30 days of receipt of a written request by a landowner in an area of a voided certificate, the executive director shall affirm that the certificate is modified to reflect the voided portion of the CCN and direct the municipality to prepare and record revised maps of its service area within 30 days of receipt of the affirmation. A municipality that holds a CCN, a portion of which is void under this subsection, may submit an application to the commission to reinstate all or a portion of such voided area if the municipality has obtained the written consents of all affected landowners.

(d) Area within municipality.

(1) If an area is within the boundaries of a municipality, all retail public utilities certified or entitled to certification under this chapter to provide service or operate facilities in that area may continue and extend service in its area of public convenience and necessity within the area under the rights granted by its certificate and this chapter, unless the municipality exercises its power of eminent domain to acquire the property of the retail public utility under this subsection. Except as provided by Texas Water Code, §13.255, a municipally owned or operated utility may not provide retail water and sewer utility service within the area certificated to another retail public utility without first having obtained from the commission a CCN that includes the areas to be served.

(2) This subsection may not be construed as limiting the power of municipalities to incorporate or extend their boundaries by annexation, or as prohibiting any municipality from levying taxes and other special charges for the use of the streets as are authorized by Texas Tax Code, §182.025.

(3) In addition to any other rights provided by law, a municipality with a population of more than 500,000 may exercise the power of eminent domain in the manner provided by Texas Property Code, Chapter 2, to acquire a substandard water or sewer system if all the facilities of the system are located entirely within the municipality's boundaries. The municipality shall pay just and adequate compensation for the property. In this subsection, substandard water or sewer system means a system that is not in compliance with the municipality's standards for water and wastewater service.

(A) A municipality shall notify the commission prior to filing an eminent domain lawsuit to acquire a substandard water or sewer system.

(B) The municipality, in its sole discretion, shall request that the commission either cancel the CCN of the acquired system or transfer the certificate to the municipality and the commission shall take such requested action.

§291.106. Notice for Applications for Certificates of Convenience and Necessity and Requirements for Recording Maps and Descriptions of Areas Covered by Certificates of Convenience and Necessity.

(a) If an application for issuance or amendment of a certificate of public convenience and necessity (CCN) is filed, the applicant will prepare a notice or notices, as prescribed in the commission's application form, which will include the following:

(1) all [~~All~~] information outlined in the Administrative Procedure Act, Texas Government Code, Chapter 2001;

(2) all information stipulated in the commission's instructions for completing an application for a CCN [~~Instructions for Completing an Application for a Certificate of Convenience and Necessity~~]; and

(3) a statement that persons who wish to intervene or comment upon the action sought should contact the Utilities and Districts [~~Utility Rates and Services~~] Section, Water Supply [~~Utilities~~] Division, Texas Commission on Environmental Quality [~~Natural Resource Conservation Commission~~], P.O. Box 13087, Austin, Texas 78711-3087, within 30 days of mailing or publication of notice, whichever occurs later.

(b) After reviewing and, if necessary, modifying the proposed notice, the commission will send the notice to the applicant for publication and/or mailing.

(1) For applications for issuance of a new CCN [~~certificate of public convenience and necessity~~], the applicant shall mail the notice to cities and neighboring retail public utilities providing the same utility service whose corporate limits or certificated service area boundaries are within five miles of the requested service area boundaries, and any city with an extraterritorial [~~extra-territorial~~] jurisdiction that [~~which~~] overlaps the proposed service area boundaries.

(2) For applications for an amendment of a CCN [~~certificate of public convenience and necessity~~], the applicant shall mail the notice to cities and neighboring retail public utilities providing the same utility service whose corporate limits or certificated service area boundaries are within two miles of the requested service area boundaries, and any city with an extraterritorial [~~extra-territorial~~] jurisdiction that

[~~which~~] overlaps the proposed service area boundaries. If decertification or dual certification is being requested, the applicant shall provide notice by certified mail to the current CCN holder.

(3) Except as otherwise provided by this subsection, in addition to the notice required by subsection (a) of this section, the applicant shall mail notice to each owner of a tract of land that is at least 50 acres and is wholly or partially included in the area proposed to be certified. Notice required under this subsection must be mailed by first class mail to the owner of the tract according to the most current tax appraisal rolls of the applicable central appraisal district at the time the commission received the application for the certificate or amendment. Good faith efforts to comply with the requirements of this subsection shall be considered adequate mailed notice to landowners. Notice under this subsection is not required for a matter filed with the commission under:

(A) Texas Water Code, §13.248 or §13.255; or

(B) Texas Water Code, Chapter 65.

(4) [~~(3)~~] Applicants previously exempted for operations or extensions in progress as of September 1, 1975, must provide individual mailed notice to all current customers. The notice must contain the information required in the application.

(5) [~~(4)~~] Utilities that are required to possess a certificate but that are currently providing service without a certificate must provide individual mailed notice to all current customers. The notice must contain the current rates, the effective date those rates were instituted, and any other information required in the application.

(6) [~~(5)~~] Within 30 days of the date of the notice, the applicant shall submit to the commission an affidavit specifying the persons to whom notice was provided and the date of that notice.

(c) The applicant shall publish the notice in a newspaper having general circulation in the county or counties where a CCN [~~certificate of convenience and necessity~~] is being requested, once each week for two consecutive weeks beginning with the week after the notice is received from the commission. Proof of publication in the form of a publisher's affidavit shall be submitted to the commission within 30 days of the last publication date. The affidavit shall state with specificity each county in which the newspaper is of general circulation.

(d) (No change.)

(e) In this section, utility service provider means a retail public utility other than a district subject to Texas Water Code, §49.452.

(f) A utility service provider shall:

(1) record in the real property records of each county in which the service area, or a portion of the service area is located, a certified copy of the map of the CCN and of any amendment to the certificate as contained in the commission's records, and a boundary description of the service area by:

(A) a metes and bounds survey certified by a licensed state land surveyor or a registered professional land surveyor;

(B) the Texas State Plane Coordinate System;

(C) verifiable landmarks, including a road, creek, or railroad line; or

(D) if a recorded plat of the area exists, lot and block number; and

(2) submit to the executive director evidence of the recording.

(g) The recording required by this section must be completed not later than the 31st day after the date a utility service provider receives a final order from the commission granting an application for a new certificate or for an amendment to a certificate that results in a change in the utility service provider's service area.

(h) The recording required by this section for holders of certificates of public convenience and necessity already in existence as of September 1, 2005 must be completed not later than January 1, 2007.

§291.109. Report of Sale, Merger, Etc.; Investigation; Disallowance of Transaction.

(a) On or before the 120th day before the effective date of any sale, acquisition, lease, rental, merger, or consolidation of any water or sewer system required by law to possess a certificate of public convenience and necessity, the utility or water supply or sewer service corporation shall file a written application with the commission and give public notice of the action. The notification shall be on the form required by the commission and the comment period will not be less than 30 days. Public notice may be waived by the executive director for good cause shown. The 120-day period begins on the latter of:

(1) the date the applicant files an application under this section;

(2) unless notice has been waived by the executive director, the last date the applicant mailed the required notices as stated in the applicant's affidavit of notice; or

(3) unless notice has been waived by the executive director, the last date of the publication of the notice in the newspaper as stated in the affidavit of publication.

(b) - (d) (No change.)

(e) Prior to the expiration of the 120-day notification period, the executive director shall notify all known parties to the transaction of the decision to either approve the sale administratively or to request that the commission hold a public hearing to determine if the transaction will serve the public interest. The executive director may request a hearing if:

(1) - (2) (No change.)

(3) the person or an affiliated interest of the person purchasing or acquiring the water or sewer system has a history of:

(A) noncompliance with the requirements of the commission or the Department of State Health Services [~~Texas Department of Health~~]; or

(B) (No change.)

(4) - (5) (No change.)

(f) - (l) (No change.)

§291.113. Revocation or Amendment of Certificate.

(a) A certificate or other order of the commission does not become a vested right and the commission at any time after notice and hearing may on its own motion or on receipt of a petition revoke or amend any certificate of public convenience and necessity with the written consent of the certificate holder or if it finds that:

(1) the [~~The~~] certificate holder has never provided, is no longer providing service, is incapable of providing service, or has failed to provide continuous and adequate service in the area[,] or part of the area covered by the certificate;

(2) in [~~In~~] an affected county, the cost of providing service by the certificate holder is so prohibitively expensive as to constitute denial of service, provided that, for commercial developments or for residential developments started after September 1, 1997, in an affected county, the fact that the cost of obtaining service from the currently certificated retail public utility makes the development economically unfeasible does not render such cost prohibitively expensive in the absence of other relevant factors;

(3) the [~~The~~] certificate holder has agreed in writing to allow another retail public utility to provide service within its service area, except for an interim period, without amending its certificate; or

(4) the [~~The~~] certificate holder has failed to file a cease and desist action under [~~pursuant to~~] Texas Water Code [~~(TWC)~~], §13.252 within 180 days of the date that it became aware that another retail public utility was providing service within its service area, unless the certificate holder demonstrates good cause for its failure to file such action within the 180 days.

(b) As an alternative to decertification under subsection (a) of this section, the owner of a tract of land that is at least 50 acres and that is not in a platted subdivision actually receiving water or sewer service may petition the commission under this subsection for expedited release of the area from a certificate of public convenience and necessity so that the area may receive service from another retail public utility. The petitioner shall deliver, via certified mail, a copy of the petition to the certificate holder, who may submit information to the commission to controvert information submitted by the petitioner. The petitioner must demonstrate that:

(1) a written request for service, other than a request for standard residential or commercial service, has been submitted to the certificate holder, identifying:

(A) the area for which service is sought shown on a map with descriptions according to §291.105(a)(2) of this title (relating to Contents of Certificate of Convenience and Necessity Applications);

(B) the time frame within which service is needed for current and projected service demands in the area;

(C) the level and manner of service needed for current and projected service demands in the area; and

(D) any additional information requested by the certificate holder that is reasonably related to determination of the capacity or cost for providing the service;

(2) the certificate holder has been allowed at least 90 calendar days to review and respond to the written request and the information it contains;

(3) the certificate holder:

(A) has refused to provide the service;

(B) is not capable of providing the service on a continuous and adequate basis within the time frame, at the level, or in the manner reasonably needed or requested by current and projected service demands in the area; or

(C) conditions the provision of service on the payment of costs not properly allocable directly to the petitioner's service request, as determined by the commission; and

(4) the alternate retail public utility from which the petitioner will be requesting service is capable of providing continuous and adequate service within the time frame, at the level, and in the manner reasonably needed or requested by current and projected service demands in the area.

(c) A landowner is not entitled to make the election described in subsection (b) of this section but is entitled to contest the involuntary certification of its property in a hearing held by the commission if the landowner's property is located:

(1) within the boundaries of any municipality or the extraterritorial jurisdiction of a municipality with a population of more than 500,000 and the municipality or retail public utility owned by the municipality is the holder of the certificate; or

(2) in a platted subdivision actually receiving water or sewer service.

(d) Within 90 calendar days from the date the commission determines the petition filed under subsection (b) of this section to be administratively complete, the commission or executive director shall grant the petition unless the commission or executive director makes an express finding that the petitioner failed to satisfy the elements required in subsection (b) of this section and supports its finding with separate findings and conclusions for each element based solely on the information provided by the petitioner and the certificate holder. The commission or executive director may grant or deny a petition subject to terms and conditions specifically related to the service request of the petitioner and all relevant information submitted by the petitioner and the certificate holder. In addition, the commission or executive director may require an award of compensation as otherwise provided by this section.

(e) Texas Government Code, Chapter 2001, does not apply to any petition filed under subsection (b) of this section. The decision of the commission or executive director on the petition is final after any reconsideration authorized under §50.139 of this title (relating to Motion to Overturn Executive Director's Decision) and may not be appealed.

(f) [~~(b)~~] Upon written request from the certificate holder, the executive director may cancel the certificate of a utility or water supply corporation authorized by rule to operate without a certificate of public convenience and necessity under Texas Water Code [~~TWC~~], §13.242(c).

(g) [~~(c)~~] If the certificate of any retail public utility is revoked or amended, the commission may require one or more retail public utilities to provide service in the area in question. The order of the commission shall not be effective to transfer property.

(h) [~~(d)~~] A retail public utility may not in any way render retail water or sewer service directly or indirectly to the public in an area that has been decertified under this section without providing compensation for any property that the commission determines is rendered useless or valueless to the decertified retail public utility as a result of the decertification.

(i) [~~(e)~~] The determination of the monetary amount of compensation, if any, shall be determined at the time another retail public utility seeks to provide service in the previously decertified area and before service is actually provided but no later than the 90th calendar day after the date on which a retail public utility notifies the commission of its intent to provide service to the decertified area.

(j) [~~(f)~~] The monetary amount shall be determined by a qualified individual or firm serving as independent appraiser agreed upon by the decertified retail public utility and the retail public utility seeking to serve the area. The determination of compensation by the independent appraiser shall be binding on the commission. The costs of the independent appraiser shall be borne by the retail public utility seeking to serve the area.

(1) If the retail public utilities cannot agree on an independent appraiser within ten calendar days after the date on which the retail public utility notifies the commission of its intent to provide service to the decertified area, each retail public utility shall engage its own appraiser at its own expense, and each appraisal shall be submitted to the commission within 60 calendar days after the date on which the retail public utility notified the commission of its intent to provide service to the decertified area.

(2) After receiving the appraisals, the commission or executive director shall appoint a third appraiser who shall make a determination of the compensation within 30 days after the commission receives the appraisals. The determination may not be less than the lower appraisal or more than the higher appraisal. Each retail public utility shall pay one-half of the cost of the third appraisal.

(k) [~~(g)~~] For the purpose of implementing this section, the value of real property owned and utilized by the retail public utility for its facilities shall be determined according to the standards set forth in Texas Property Code, Chapter 21, governing actions in eminent domain and the value of personal property shall be determined according to the factors in this subsection. The factors ensuring that the compensation to a retail public utility [~~for the taking, damaging, or loss of personal property, including the retail public utility's business,~~] is just and adequate shall [~~at a minimum~~] include: the amount of the retail public utility's debt allocable for service to the area in question [~~the impact on the existing indebtedness of the retail public utility and its ability to repay that debt~~]; the value of the service facilities of the retail public utility located within the area in question; the amount of any expenditures for planning, design, or construction of service facilities that are allocable to service to the area in question; the amount of the retail public utility's contractual obligations allocable to the area in question; any demonstrated impairment of service or increase of cost to consumers of the retail public utility remaining after the decertification; the impact on future revenues lost from existing customers [~~and expenses of the retail public utility~~]; necessary and reasonable legal expenses and professional fees; [~~factors relevant to maintaining the current financial integrity of the retail public utility;~~] and other relevant factors.

(l) As a condition to decertification or single certification under Texas Water Code, §13.254 or §13.255, and on request by a retail public utility that has lost certificated service rights to another retail public utility, the commission may order:

(1) the retail public utility seeking to provide service to a decertified area to serve the entire service area of the retail public utility that is being decertified; and

(2) the transfer of the entire certificate of public convenience and necessity of a partially decertified retail public utility to the retail public utility seeking to provide service to the decertified area.

(m) The commission shall order service to the entire area under subsection (l) of this section if the commission finds that the decertified retail public utility will be unable to provide continuous and adequate service at an affordable cost to the remaining customers.

(n) The commission shall require the retail public utility seeking to provide service to the decertified area to provide continuous and adequate service to the remaining customers at a cost comparable to the cost of that service to its other customers and shall establish the terms under which the service must be provided. The terms may include:

(1) transferring debt and other contract obligations;

(2) transferring real and personal property;

(3) establishing interim service rates for affected customers during specified times; and

(4) other provisions necessary for the just and reasonable allocation of assets and liabilities.

(o) The retail public utility seeking decertification shall not charge the affected customers any transfer fee or other fee to obtain service other than the retail public utility's usual and customary rates for monthly service or the interim rates set by the commission, if applicable.

(p) The commission shall not order compensation to the decertificated retail public utility if service to the entire service area is ordered under this section.

[~~(h) The commission shall determine whether payment of compensation shall be in a lump sum or paid out over a specified period of time. If there were no current customers in the area decertified and no immediate loss of revenues or if there are other valid reasons determined by the commission, installment payments as new customers are added in the decertified area may be an acceptable method of payment.~~]

[~~(i) On the request of a municipality with a population of more than 1.3 million served by a public utility, the commission at any time after notice and hearing may revoke the public utility's certificate of public convenience and necessity if it finds that the public utility:~~]

[~~(1) has never provided, is no longer providing, or has failed to provide continuous and adequate service as defined in §291.93 of this title (relating to Adequacy of Water Service) or §291.94 of this title (relating to Adequacy of Sewer Service) in the municipality requesting the revocation; or~~]

[~~(2) has been grossly or continuously mismanaged or has grossly or continuously not complied with applicable statutes, commission rules, or commission orders.~~]

[~~(j) If the certificate is revoked under subsection (i) of this section, the municipality that requested the revocation shall operate the decertified public utility for an interim period necessary for the municipality to gain commission approval to acquire the decertified public utility's facilities and to transfer the decertified public utility's certificate of public convenience and necessity. The municipality must apply in accordance with commission rules.~~]

[~~(k) The monetary amount to be paid for the facilities of a public utility decertified under subsection (i) of this section shall be determined by a qualified individual or firm serving as independent appraiser agreed upon by the decertified public utility and the municipality. The determination of compensation by the independent appraiser shall be binding on the commission. The costs of the independent appraiser shall be borne by the municipality.~~]

[~~(l) For the purpose of implementing subsection (k) of this section, the value of real property shall be determined according to the standards set forth in Texas Property Code, Chapter 21, governing actions in eminent domain.~~]

[~~(m) The commission shall determine whether payment of compensation shall be in a lump sum or paid out over a specified period of time.~~]

§291.115. Cessation of Operations by a Retail Public Utility.

(a) - (f) (No change.)

(g) If a hearing is requested, the application will be processed in accordance with §55.101(g) [~~Chapter 263~~] of this title (relating to Applicability [~~Final Approval By Executive Director, Evaluation of Request for Contested Case Hearing~~]).

(h) (No change.)

(i) In determining whether to grant authorization to the retail public utility for discontinuation, reduction, or impairment of utility service, the commission shall consider, but is not limited to, the following factors:

(1) the effect on the customers and landowners;

(2) - (7) (No change.)

(8) the feasibility of customers and landowners obtaining service from alternative sources, considering the costs to the customer, quality of service available from the alternative source, and length of time before full service can be provided.

(j) (No change.)

§291.117. Contracts Valid and Enforceable.

(a) Contracts between retail public utilities designating areas to be served and customers to be served by those retail public utilities, when approved by the commission after notice and hearing, are valid and enforceable and are incorporated into the certificates of public convenience and necessity. Nothing in this provision negates the requirements of Texas Water Code, §13.301.

(b) Retail public utilities may request approval of contracts by filing a written request with the commission including:

(1) maps of the area to be transferred;

(2) a copy of the executed contract or agreement;

(3) if applicable, an affidavit that notice has been provided under Texas Water Code, §13.301;

(4) the filing fee as prescribed by Texas Water Code, §5.701; and

(5) any other information requested by the executive director.

§291.119. Filing of Maps.

Each public [~~On request by the commission, each~~] utility and water supply or sewer service corporation shall file with the commission a map or maps showing all its facilities and illustrating separately facilities for production, transmission, and distribution of its services, and each certificated retail public utility shall file with the commission a map or maps showing any facilities, customers, or area currently being served outside its certificated areas.

§291.120. Single Certification in Incorporated or Annexed Areas.

(a) In the event that an area is incorporated or annexed by a municipality, either before or after the effective date of this section, the municipality and a retail public utility that provides water or sewer service to all or part of the area under a certificate of convenience and necessity may agree in writing that all or part of the area may be served by a municipally owned utility, by a franchised utility, or by the retail public utility. In this section, the phrase franchised utility means a retail public utility that has been granted a franchise by a municipality to provide water or sewer service inside municipal boundaries. The agreement may provide for single or dual certification of all or part of the area, for the purchase of facilities or property, and for such other or additional terms that the parties may agree on. If a franchised utility is to serve the area, the franchised utility shall also be a party to the agreement. The executed agreement shall be filed with the commission, and the commission, on receipt of the agreement, shall incorporate the terms of the agreement into the respective certificates of convenience and necessity of the parties to the agreement.

(b) If an agreement is not executed within 180 days after the municipality, in writing, notifies the retail public utility of its intent to provide service to the incorporated or annexed area, and if the municipality desires and intends to provide retail utility service to the area, the municipality, prior to providing service to the area, shall file an application with the commission to grant single certification to the municipally owned water or sewer utility or to a franchised utility. If an application for single certification is filed, the commission shall fix a time and place for a hearing and give notice of the hearing to the municipality and franchised utility, if any, and notice of the application and hearing to the retail public utility.

(c) The commission shall grant single certification to the municipality. The commission shall also determine whether single certification as requested by the municipality would result in property of a retail public utility being rendered useless or valueless to the retail public utility, and shall determine in its order the monetary amount that is adequate and just to compensate the retail public utility for such property. If the municipality in its application has requested the transfer of specified property of the retail public utility to the municipality or to a franchised utility, the commission shall also determine in its order the adequate and just compensation to be paid for such property under the provisions of this section, including an award for damages to property remaining in the ownership of the retail public utility after single certification. The order of the commission shall not be effective to transfer property. A transfer of property may only be obtained under this section by a court judgment rendered under Texas Water Code, §13.255(d) or (e). The grant of single certification by the commission shall go into effect on the date the municipality or franchised utility, as the case may be, pays adequate and just compensation in accordance with court order, or pays an amount into the registry of the court or to the retail public utility under Texas Water Code, §13.255(f). If the court judgment provides that the retail public utility is not entitled to any compensation, the grant of single certification shall go into effect when the court judgment becomes final. The municipality or franchised utility must provide to each customer of the retail public utility being acquired an individual written notice within 60 days after the effective date for the transfer specified in the court judgment. The notice must clearly advise the customer of the identity of the new service provider, the reason for the transfer, the rates to be charged by the new service provider, and the effective date of those rates.

(d) In the event the final order of the commission is not appealed within 30 days, the municipality may request the district court of Travis County to enter a judgment consistent with the order of the commission.

(e) Any party that is aggrieved by a final order of the commission under this section may file an appeal with the district court of Travis County within 30 days after the order becomes final.

(f) Transfer of property shall be effective on the date the judgment becomes final. However, after the judgment of the court is entered, the municipality or franchised utility may take possession of condemned property pending appeal if the municipality or franchised utility pays the retail public utility or pays into the registry of the court, subject to withdrawal by the retail public utility, the amount, if any, established in the court's judgment as just and adequate compensation. To provide security in the event an appellate court, or the trial court in a new trial or on remand, awards compensation in excess of the original award, the municipality or franchised utility, as the case may be, shall deposit in the registry of the court an additional sum in the amount of the award, or a surety bond in the same amount issued by a surety company qualified to do business in this state, conditioned to secure the payment of an award of damages in excess of the original award of the trial court. In the event the municipally owned utility or franchised utility takes possession of property or provides utility service in the singly certificated area pending appeal, and a court in a

final judgment in an appeal under this section holds that the grant of single certification was in error, the retail public utility is entitled to seek compensation for any damages sustained by it in accordance with subsection (g) of this section.

(g) For the purpose of implementing this section, the value of real property owned and utilized by the retail public utility for its facilities shall be determined according to the standards in Texas Property Code, Chapter 21, governing actions in eminent domain; the value of personal property shall be determined according to the factors in this subsection. The factors ensuring that the compensation to a retail public utility is just and adequate shall, at a minimum, include: impact on the existing indebtedness of the retail public utility and its ability to repay that debt; the value of the service facilities of the retail public utility located within the area in question; the amount of any expenditures for planning, design, or construction of service facilities outside the incorporated or annexed area that are allocable to service to the area in question; the amount of the retail public utility's contractual obligations allocable to the area in question; any demonstrated impairment of service or increase of cost to consumers of the retail public utility remaining after the single certification; the impact on future revenues lost from existing customers; necessary and reasonable legal expenses and professional fees; factors relevant to maintaining the current financial integrity of the retail public utility; and other relevant factors.

(h) The total compensation to be paid to a retail public utility under subsections (g) and (m) of this section must be determined not later than the 90th calendar day after the date on which the commission determines that the municipality's application is administratively complete.

(i) A municipality or a franchised utility may dismiss an application for single certification without prejudice at any time before a judgment becomes final provided the municipality or the franchised public utility has not taken physical possession of property of the retail public utility or made payment for such right under Texas Water Code, §13.255(f).

(j) In the event that a municipality files an application for single certification on behalf of a franchised utility, the municipality shall be joined in such application by such franchised utility, and the franchised utility shall make all payments required in the court's judgment to adequately and justly compensate the retail public utility for any taking or damaging of property and for the transfer of property to such franchised utility.

(k) This section shall apply only in a case where:

(1) the retail public utility that is authorized to serve in the certificated area that is annexed or incorporated by the municipality is a nonprofit water supply or sewer service corporation, a special utility district under Texas Water Code, Chapter 65, or a fresh water supply district under Texas Water Code, Chapter 53; or

(2) the retail public utility that is authorized to serve in the certificated area that is annexed or incorporated by the municipality is a retail public utility, other than a nonprofit water supply or sewer service corporation, and whose service area is located entirely within the boundaries of a municipality with a population of 1.7 million or more according to the most recent federal census.

(l) The following conditions apply when a municipality or franchised utility makes an application to acquire the service area or facilities of a retail public utility described in subsection (k)(2) of this section:

(1) the commission or court must determine that the service provided by the retail public utility is substandard or its rates are unreasonable in view of the reasonable expenses of the utility;

(2) if the municipality abandons its application, the court or the commission is authorized to award to the retail public utility its reasonable expenses related to the proceeding, including attorney fees; and

(3) unless otherwise agreed by the retail public utility, the municipality must take the entire utility property of the retail public utility in a proceeding under this section.

(m) For an area incorporated by a municipality, the compensation provided under subsection (g) of this section shall be determined by a qualified individual or firm to serve as independent appraiser, which shall be selected by the affected retail public utility, and the costs of the appraiser shall be paid by the municipality. For an area annexed by a municipality, the compensation provided under subsection (g) of this section shall be determined by a qualified individual or firm to which the municipality and the retail public utility agree to serve as independent appraiser. If the retail public utility and the municipality are unable to agree on a single individual or firm to serve as the independent appraiser before the 11th day after the date the retail public utility or municipality notifies the other party of the impasse, the retail public utility and municipality each shall appoint a qualified individual or firm to serve as independent appraiser. On or before the tenth business day after the date of their appointment, the independent appraisers shall meet to reach an agreed determination of the amount of compensation. If the appraisers are unable to agree on a determination before the 16th business day after the date of their first meeting under this subsection, the retail public utility or municipality may petition the commission or a person the commission designates for the purpose to appoint a third qualified independent appraiser to reconcile the appraisals of the two originally appointed appraisers. The determination of the third appraiser may not be less than the lesser or more than the greater of the two original appraisals. The costs of the independent appraisers for an annexed area shall be shared equally by the retail public utility and the municipality. The determination of compensation under this subsection is binding on the commission.

(n) The commission shall deny an application for single certification by a municipality that fails to demonstrate compliance with the commission's minimum requirements for public drinking water systems.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 16, 2005.

TRD-200504100
Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: October 30, 2005
For further information, please call: (512) 239-6087

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CHAPTER 328. WASTE MINIMIZATION AND RECYCLING

SUBCHAPTER A. PURPOSE AND GENERAL INFORMATION

30 TAC §328.2

The Texas Commission on Environmental Quality (TCEQ or commission) proposes an amendment to §328.2.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULE

Senate Bill (SB) 1298, 79th Legislature, 2005, amended Texas Occupations Code, §1956.103, by adding subsection (c), which allows for the sale or transfer of scrap metal that contains a fuel tank without obtaining from the metal recycling entity a written acknowledgment that the scrap metal contains a fuel tank, and which allows for the sale or other transfer of a motor vehicle that has a fuel tank to a metal recycling entity, provided in both cases that the fuel tank has been completely drained and rendered unusable. In order to define the meaning of the terms "completely drained" and "unusable," the commission is proposing to amend §328.2 by adding definitions for these two terms. SB 1298 also amends Texas Occupations Code, §1956.104(3), to require recycling facilities to post notice that it is a violation of state law to sell a fuel tank that has not been drained and rendered unusable. SB 1298, §3(a) requires the commission to adopt the standards required under Texas Occupations Code, §1956.103(c) by December 1, 2005.

SECTION DISCUSSION

The proposed amendments to §328.2, Definitions, adds definitions of "Completely drained" and "Unusable," and renumbers existing definitions to accommodate these new definitions. Under proposed new §328.2(2), for the purposes of Texas Occupations Code, §1956.103(c), a fuel tank will be considered to be completely drained if it meets three criteria. First, all fuel must be removed from the tank using commonly employed practices for removing fuel from a tank, such as pouring, pumping, or aspirating. Second, the procedure used to remove the fuel from the tank must conform with accepted industry practices. Third, the tank must be emptied of all accumulated sludges or residues, and must be purged of all residual vapors in accordance with accepted industry procedures commonly employed for the type of fuel. The new definitions would apply only to the sale or transfer of a fuel tank to a metal recycling entity on or after January 1, 2006. Existing definitions in §328.2(2) - (5) will be renumbered as §328.2(3) - (6), respectively. Under proposed new §328.2(7), the term "Unusable" is defined, for the purposes of Texas Occupations Code, §1956.103(c), as a fuel tank that has been completely drained and can no longer be used because it has been punctured, ruptured, crushed, shredded, or has other significant structural changes or alterations. The new definition would apply only to the sale or transfer of a fuel tank to a metal entity on or after January 1, 2006.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Walter Perry, Analyst, Strategic Planning and Assessment Section, determined that, for the first five-year period the proposed amendment is in effect, no significant fiscal implications are anticipated for the agency or other units of state or local government.

The proposed rule implements SB 1298, 79th Legislature, 2005, and provides an exception to the prohibition on the sale or transfer of automotive fuel tanks, by allowing fuel tanks that have been drained and rendered unusable, regardless of whether the tank is attached to a motor vehicle, to be sold or transferred to metal recycling facilities. The proposed rulemaking would be applicable to all fuel tanks sold or transferred to metal recyclers on or after January 1, 2006.

The proposed rule would allow automobile dismantlers and metal recycling facilities to take advantage of new recycling equipment that allows for the safe and effective removal of fuel from tanks that remain on vehicles in a manner that more effectively protects against accidental fuel spills. The proposed rulemaking would be applicable to automobile dismantlers' yards and metal recycling facilities, none of which are owned or thought to be owned by units of state or local government.

PUBLIC BENEFITS AND COSTS

Mr. Perry also determined that for each year of the first five years the proposed amendment is in effect, the public benefit anticipated from the changes seen in the proposed rule will be enhanced protection of the public health and environment through more efficient regulation of the sale or transfer of scrap automotive fuel tanks.

The proposed rule would allow automobile dismantlers and metal recycling facilities to take advantage of new recycling equipment that allows for the safe and effective removal of fuel from tanks that remain on vehicles in a manner that more effectively protects against accidental fuel spills. No fiscal implications are anticipated for either auto salvage facilities or metal recycling facilities.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rulemaking. It is not known how many small or micro-businesses are engaged in the business of auto salvage or metal recycling in the State of Texas. The change in the rule would result in no additional costs for small and micro-businesses.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rule in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the proposed rule is not subject to §2001.0225, because it does not meet the criteria for a "major environmental rule" as defined in that statute.

A "major environmental rule" means a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The specific intent of the proposed rule is to protect the environment from possible spills of a potentially hazardous material, motor vehicle fuel, and to reduce risks to human health from environmental exposure to motor fuel. However, it is not anticipated that the proposed rule will adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The commission concludes that this proposed rule does not meet the definition of a major environmental rule.

Furthermore, even if the proposed rule did meet the definition of a major environmental rule, the proposed rule is not subject to Texas Government Code, §2001.0225, because it does not meet any of the four applicable requirements specified in §2001.0225(a). Texas Government Code, §2001.0225(a) applies to a rule adopted by an agency, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

In this case, the proposed rule does not meet any of these requirements. First, there are no applicable federal standards that this rule would address. Second, the proposed rule does not exceed an express requirement of state law in Texas Occupations Code, §1956.103. Third, there is no delegation agreement that would be exceeded by the proposed rule. Fourth, the commission proposes this rule under the specific authority of Texas Occupations Code, §1956.103. This rule is also proposed under the authority of Texas Health and Safety Code, §§361.011, 361.017, and 361.024, which provide the commission the authority to adopt rules necessary to carry out its powers and duties under the Texas Solid Waste Disposal Act, and §361.022 and §361.023, which sets public policy in the management of municipal solid waste and hazardous waste to include reuse or recycling of waste. Therefore, the commission does not propose the adoption of the rule solely under the commission's general powers. The commission invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated this proposed rule and performed a preliminary assessment of whether the proposed rule constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of the proposed rule is to protect the environment from possible spills of a potentially hazardous material, motor vehicle fuel, and to reduce risks to human health from environmental exposure to motor fuel. The proposed rule would substantially advance this stated purpose by requiring that fuel tanks on motor vehicles intended for scrap metal recycling entities be properly drained of fuel, and emptied of accumulated sludges or residues.

Promulgation and enforcement of this proposed rule would be neither a statutory nor a constitutional taking of private real property because the rule does not affect real property. This rule exercises commission jurisdiction over municipal solid waste and hazardous waste and the reuse and recycling of municipal solid waste and hazardous waste.

There are no burdens imposed on private real property, and the benefits to society are increased safety at metal recycling facilities and the prevention of pollution. In addition, the proposed rule does not burden, restrict, or limit an owner's right to property or reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. Therefore, this proposed rule will not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rule and found that it is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will it affect any action or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC, §505.11(a)(6). Therefore, the proposed rule is not subject to the Texas Coastal Management Program.

SUBMITTAL OF COMMENTS

Comments may be submitted to Patricia Durón, MC 205, Texas Register Team, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Project Number 2005-044-328-PR. Comments must be received by 5:00 p.m., October 31, 2005. For further information, please contact David H. Murry, Industrial and Hazardous Waste Permits Section, (512) 239-6080.

STATUTORY AUTHORITY

The amendment is proposed under Texas Occupations Code, §1956.103, which prohibits the sale of a motor vehicle for scrap metal unless the fuel tank has been completely drained and rendered unusable in accordance with commission rules; SB 1298, §3, which directs the TCEQ to adopt standards required under Texas Occupations Code, §1956.103, by December 1, 2005; Texas Solid Waste Disposal Act in Texas Health and Safety Code, §361.022, which sets public policy in the management of municipal solid waste to include reuse or recycling of waste; §361.023, which sets public policy in the management of hazardous waste to include reuse or recycling of waste; §361.011, which establishes the commission's jurisdiction over all aspects of the management of municipal solid waste with all powers necessary or convenient to carry out the responsibilities of that jurisdiction; §361.017, which establishes the commission's jurisdiction over all aspects of the management of industrial solid waste and hazardous municipal waste with all powers necessary or convenient to carry out the responsibilities of that jurisdiction; and §361.024, which provides the commission with rulemaking authority.

The proposed amendment implements Texas Occupations Code, §1956.103 and SB 1298, §3.

§328.2. Definitions.

The following terms, when used in this subchapter, [~~shall~~] have the following meanings. Other definitions may be found in Chapters 3, 330, and 332 of this title (relating to Definitions; Municipal Solid Waste; and Composting).

(1) Affiliated with--A person, "A" is affiliated with another person, "B," if either of the following two conditions applies:

(A) "A" owns or controls more than 20% of the voting interest, fair market value, profits, proceeds, or capital gains of "B"; or

(B) "B" owns or controls more than 20% of the voting interest, fair market value, profits, proceeds, or capital gains of "A."

(2) Completely drained--For the purposes of Texas Occupations Code, §1956.103(c), regarding the sale or transfer of a fuel tank to a metal recycling entity on or after January 1, 2006, a fuel tank is completely drained if:

(A) all fuel has been removed that can be removed using practices commonly employed to remove fuel from a tank, e.g., pouring, pumping, and aspirating;

(B) the procedures used to remove fuel from the tank conform with accepted industry practices; and

(C) the tank is emptied of all accumulated sludges or residues, and is purged of all residual vapors in accordance with accepted industry procedures commonly employed for the type of fuel.

(3) [~~(2)~~] Incidental amount(s) of non-recyclable waste or incidental non-recyclable waste--Non-recyclable waste that accompanies recyclable material despite reasonable efforts to maintain source-separation and that is no more than 10% by volume or scale weight of each incoming load, and averages no more than 5% of the total scale weight or volume of all materials received in the last six-month period, as substantiated by the facility's records. The practices and standards of recycling facilities of a particular type will be considered by the executive director to allow alternative compliance with these standards on a case-by-case basis, as provided for in §328.4(e) of this title (relating to Limitations on Storage of Recyclable Materials). Reasonable efforts to maintain source-separation must include: having dual collection and transportation systems in place for recyclable material and non-recyclable waste at the point of generation; having informed generators and haulers of the source-separation requirements; and the recycling facility having instituted quality control measures including, at a minimum, inspection of incoming loads and rejection by the recycling facility of those loads that would cause the facility to exceed these percentages as described in this paragraph. After incoming loads are processed for recycling, all resulting non-recyclable waste must be managed according to the requirements of this chapter or taken to an authorized solid waste facility within one week. Incidental amount(s) of non-recyclable waste does not include non-recyclable components that are integral to recyclable material, including:

(A) the non-recyclable components of white goods, whole computers, whole automobiles, or other manufactured items for which dismantling and separation of recyclable from non-recyclable components by the generator are impractical, such as insulation or electronic components in white goods;

(B) source-separated recyclable material rendered unmarketable by damage during collection, unloading, and sorting, such as broken recyclable glass; and

(C) tramp materials, such as:

(i) glass from recyclable metal windows;

(ii) nails and roofing felt attached to recyclable shingles;

(iii) nails and sheetrock attached to recyclable lumber generated through the demolition of buildings; and

(iv) pallets and packaging materials.

(4) [~~(3)~~] Processed for recycling or processing for beneficial use--Material has been or is processed for recycling, or undergoes processing for beneficial reuse, if it has been subjected to activities including extraction or separation of component materials (such as the separation of commingled recyclable materials), cleaning, grinding, or other preparation at a recycling facility to make it amenable for subsequent recycling or beneficial reuse.

(5) [~~(4)~~] Secondary metals recycling facility--A facility that:

(A) is predominately engaged in the business of obtaining ferrous or nonferrous metals that have served their original economic purpose in order to convert those metals, or to sell those metals for conversion, into raw material products consisting of prepared grades and having an existing or potential economic value;

(B) has the capability for performing the process by which ferrous or nonferrous metals are converted into raw material products consisting of prepared grades and having an existing or potential economic value, other than by the exclusive use of hand tools, by methods including, without limitation, the processing, sorting, cutting, classifying, cleaning, baling, wrapping, shredding, shearing, or changing the physical form or chemical content thereof; and

(C) sells or purchases those ferrous or nonferrous metals solely for purposes of use in the form of raw materials in the production of new products.

(6) [~~(5)~~] Source-separated recyclable material--Recyclable material from residential, commercial, municipal, institutional, recreational, industrial, and other community activities, that at the point of generation has been separated, collected, and transported separately from municipal solid waste, or transported in the same vehicle as municipal solid waste, but in separate containers or compartments. Source-separation does not require the recovery or separation of non-recyclable components that are integral to a recyclable product, including:

(A) the non-recyclable components of white goods, whole computers, whole automobiles, or other manufactured items for which dismantling and separation of recyclable from non-recyclable components by the generator are impractical, such as insulation or electronic components in white goods;

(B) source-separated recyclable material rendered unmarketable by damage during collection, unloading, and sorting, such as broken recyclable glass; and

(C) tramp materials, such as:

(i) glass from recyclable metal windows;

(ii) nails and roofing felt attached to recyclable shingles;

(iii) nails and sheetrock attached to recyclable lumber generated through the demolition of buildings; and

(iv) pallets and packaging materials.

(7) Unusable--For the purposes of Texas Occupations Code, §1956.103(c) regarding the sale or transfer of a fuel tank to a metal recycling entity on or after January 1, 2006, a fuel tank is rendered unusable if the tank is completely drained and can no longer be used because it has been punctured, ruptured, crushed, shredded, or has other significant structural changes or alterations.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 16, 2005.

TRD-200504104
Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: October 30, 2005
For further information, please call: (512) 239-6087

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 3. GENERAL PROVISIONS

The Texas General Land Office (GLO) proposes the amendments to 31 TAC Chapter 3 relating to General Provisions, Subchapter B relating to Training and Education of Employees, §3.22 relating to Employee Obligation, §3.24 relating to No Effect on At-Will Employee Status and Subchapter C relating to Services and Products, §3.31 relating to Fees. These rule amendments have been undertaken as a result of the comprehensive review of the GLO's rules mandated by Texas Government Code §2001.039. The proposed amendments are updates that will ensure the rules are current, clear, and necessary. The proposed amendments to Chapter 3 correct non-substantive grammatical errors, reflect current agency copying practices, and update fees for service costs performed by the GLO staff.

The GLO proposes the amendment to §3.22 relating to Employee Obligation. Currently, §3.22 has two typographical errors. The first error is in reference to the General Land Office. The proposed amendment will change the "l" in land to an upper case "L." The second error is related to word "the." Currently it is listed as "thew." The proposed amendment will correct the spelling.

The GLO proposes the amendment to §3.24 relating to No Effect on At-Will Employment Status. The proposed amendment would correct two grammatical errors, replacing the word "effect" for "affect" in first sentence. In addition, the proposed amendment would place the word "or" in the last sentence to have it read, current or prospective position.

The GLO proposes amendments to §3.31 relating to Fees. Following a comprehensive review of this chapter, the GLO proposes fee increases associated with costs of filing documents, copying documents, and document searches performed by the GLO staff in the normal course of business. In addition, the GLO proposes amendments to §3.31 to correct spelling errors and implement language to reflect current agency policy.

Larry L. Laine, Chief Clerk of the GLO, has determined that for each year of the first five years the amended chapter is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering this section.

Mr. Laine has determined that for each year of the first five years the amended chapter is in effect the public benefit anticipated as a result of enforcing or administering the amended section updating references to legal citations, updating definitions and updating the GLO Legal Department mailing address. There will be no effect on small business.

There is no anticipated economic costs to individual persons as a result of the proposed amendments in this section.

The proposed amendments to §3.31, relating to fees of filing documents, copying documents and document searches will be paid by the requestor or applicant and is a minimal increase that does not cover the full costs of processing the request or application.

Mr. Laine also has determined that for each year of the first five years the amendment to §3.31 is in effect, the public, will benefit because the state will be more fairly compensated for the costs related to processing the request or application.

The GLO invites comments from the public during the review process and will address any comments received. Any questions or comments should be directed to Walter Talley, *Texas Register* Liaison, Texas General Land Office, P. O. Box 12873, Austin, TX 78711, facsimile number (512) 463-6311 or email to walter.talley@glo.state.tx.us. Written comments must be received no later than thirty (30) days from the date of publication of this notice.

SUBCHAPTER B. TRAINING AND EDUCATION OF EMPLOYEES

31 TAC §3.22, §3.24

The proposed amendments to Subchapter B, relating to Training and Education of Employees is proposed under Government Code §§656.041 - 656.049 which requires the GLO to adopt rules relating to the training and education of its employees. No other statutes, articles, or codes are affected by the proposed amendments.

§3.22. Employee Obligation.

An employee who completes training and education to obtain a degree or certification for which the General Land [~~land~~] Office has provided all or part of the required fees must agree in writing to fully repay the General Land Office any amounts paid for educational assistance if the employee voluntarily terminates employment with the [~~thew~~] agency within one year after the course or courses are completed.

§3.24. No Effect on At-Will Employment Status.

Approval to participate in a training and education program, including an agency-sponsored training, seminar or conference shall not in any way affect [~~effect~~] an employee's at-will status. The approval of a training and education program is not a guarantee or indication that approval will be granted for subsequent training and education programs. Approval to participate in a training and education program shall in no way constitute a guarantee of indication of continued employment, nor shall it constitute a guarantee or indication of future employment in a current or prospective position.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 13, 2005.

TRD-200504038
Trace Finley
Policy Director
General Land Office
Earliest possible date of adoption: October 30, 2005
For further information, please call: (512) 475-1859

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SUBCHAPTER C. SERVICES AND PRODUCTS

31 TAC §3.31

The proposed amendments to Subchapter C, relating to Fees is proposed under Texas Natural Resources Code, §§31.054, 51.174 and 52.324 which provides the GLO with the authority to set and collect certain fees and to make and enforce rules consistent with law.

Texas Government Code, Chapter 552, and Texas Natural Resources Code, Chapters 31, 32 and 51 are affected by the proposed amendments.

§3.31. Fees.

(a) (No change.)

(b) General Land Office fees. The commissioner is authorized and required to collect the following fees where applicable.

(1) Cost of land title documents.

(A) Preparation of each patent or deed of acquittance: $100 [~~$50~~].

(B) - (E) (No change.)

(2) Certificates of facts:

(A) Narrative certificates of fact consisting of all data from the inception of chain of title to the date of perfection of title and mineral history in paragraph form, short form certificate of fact (consisting of original award date, patent, deeds of acquittance, classification, current mineral history) and supplemental or limited certificates of fact (consisting of specific information or start date for history of a specific tract land):

(i) mineral classified land:

[~~(I)~~] per [~~first~~] file: $100;

[~~(II)~~ ~~each additional file: $10;~~]

(ii) non-mineral classified land:

[~~(I)~~] per [~~first~~] file: $75;

[~~(II)~~ ~~each additional file: $10.~~]

(B) Spanish documents: $75 [~~$50~~] per document, in addition to fees due under §1.3(b)(2)(A)(i) and (ii).

(3) Certified and non-certified classification letters:

(A) Certified classification letter:

[~~(i)~~] per [~~first~~] file: $50 [~~$20~~];

[~~(ii)~~ ~~each additional file: $10;~~]

(B) Non-certified classification letter: $10 per file. [~~no charge.~~]

(4) Maps and sketches: The General Land Office, Surveying Division reserves the right to deny duplication of any map or document in the Surveying Division considered too fragile or brittle to safely copy.

(A) Official county maps: $15 per map.

(B) Sketches ([~~blueline and~~] large format digital copies); per linear foot: $2.00.

(C) Working sketch, per hour ($60 [~~$50~~] minimum): $40 [~~$20~~].

[~~(D) Digitizally reproduced archival map collection up to 36 inches (large format copies): $15 per map.~~]

(D) [~~(E)~~] Digitally [~~Digitizally~~] reproduced archival map collection on special printer paper.

(i) 48 inches or less: $20 per map plus $8.00 shipping and handling;

(ii) greater than 48 inches: $40 per map plus $8.00 shipping and handling.

(5) - (6) (No change.)

(7) Vacancies:

(A) Application fee: $150.

(B) Filing fee for original field notes: $25.

(C) Affidavit Filing Fee: $25.

(D) Each deed, title opinion, or other document evidence needed to satisfy the commissioner of claimant's status. Filing fee for each document submitted as required: $25.

(E) Petition For Disqualification of Surveyor costs associated including hearing, mailing copies, other expenses, non-refundable: $250.

(8) Appraisal fees. Appraisal fees are charged for appraisals required by applications for deeds of acquittance and vacancies:

[~~(A)~~] For each tract: [~~First tract:~~] $500.

[~~(B) Each additional tract, same vicinity, same characteristics, and same owner: $50.~~]

[~~(C) If not listed above, or if 10 or more tracts are to be appraised at the same time, the fee may be negotiated by the General Land Office.~~]

(9) Duplication fees--For purposes of this section the term Archival Records is defined as records maintained in the Archives and Records Division of the Texas General Land Office. The Archives and Records Division reserves the right to deny duplication of any document or map considered too fragile or brittle to safely copy. In addition, the Archives and Records Division reserves the right to specify what [~~with~~] method(s) or reproduction may be used. Archival records for all original records affecting land titles, including original land grant files, Spanish Collection materials, school land and scrap files:

(A) - (B) (No change.)

[~~(C) Blueline and large format copies: $15.~~]

(C) [~~(D)~~] Recorded media:

(i) VHS videotape, each $10.00, other video formats $20.00 per 30 Minutes, $30.00 per 60 Minutes [~~VCR tapes, each: $15~~];

(ii) Audio cassettes, each: $7.50, audio transfer fee, $25.00 per hour, 1/2 hour minimum;

(iii) Video Transfer Fee, 1/2 hour - $25.00, 1/2 hour minimum. [~~Raw field videos (VCR tape provided by requesting party, minimum one minute):~~]

[~~(I)~~ ~~First minute: $25;~~]

[~~(II)~~ ~~Each additional minute: $15.~~]

[~~(E) Photo processing (black and white only):~~]

[~~(i)~~ ~~10 inch by 10 inch internegative: $6.00;~~]

[~~(ii)~~ ~~10 inch by 10 inch contact print: $5.00;~~]

[~~(iii)~~ ~~11 inch by 14 inch enlargement: $8.00;~~]

[~~(iv)~~ ~~16 inch by 20 inch enlargement: $12.~~]

(10) Genealogy search:

(A) Per name: $10.00 [~~$5.00~~].

(B) - (C) (No change.)

(11) Mailing fees:

(A) Mailing tubes, each: $3.00. [~~$1.75.~~]

(B) Registered mail, each item: $5.50.

(C) Handling and preparation for mailing, each item: $15.00 per package (optional). [~~$1.00.~~]

(12) (No change.)

(13) Publications:

(A) Abstract volume (on microfiche): $12.50.

(B) Abstract volume supplement (hard copy and on microfiche): $10.

(C) Abstract volume (digital on CD) $11.00.

(D) Abstract volume supplement (digital on CD) $11.00.

(E) Spanish Collection Catalogue (Part I) $15.00.

(F) Spanish Collection Catalogue (Part II) $15.00.

(14) - (16) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 19, 2005.

TRD-200504140
Trace Finley
Policy Director
General Land Office
Earliest possible date of adoption: October 30, 2005
For further information, please call: (512) 475-1859

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CHAPTER 8. GAS MARKETING PROGRAM

31 TAC §§8.1 - 8.4, 8.8

The Texas General Land Office (GLO) proposes amendments to 31 TAC, Chapter 8, §§8.1 - 8.4 and 8.8, relating to Gas Marketing Program. These amendments have been undertaken as a result of the comprehensive review of the GLO's rules mandated by Texas Government Code §2001.039. The proposed amendments are updates that will ensure the rules are current, clear, and necessary. The proposed amendments to Chapter 8 update references to legal citations, and update the mailing address of the Director - State Energy Marketing Program.

The GLO proposes the amendment to §8.1 relating to Scope of Rules. Currently, this section references Texas Civil Statutes, Article 6252-9b (Vernon 1980). The proposed amendment updates the codified legal citation as Texas Government Code §2001.006.

The GLO proposes the amendment to §8.2(7)(C) relating to Definitions. The proposed amendment will update the legal citation of the Relinquishment Act of 1919, now codified in Texas Natural Resources Code, §§52.171 - 52.190.

The GLO proposes the amendment to §8.3 relating to Contract Submission Requirements. The proposed amendment will update the mailing address of the State Energy Marketing Program for submissions of contracts and requests for review.

The GLO proposes the amendment to §8.4(2) relating to Review Criteria for All Contracts. The proposed amendment deletes the legal citation of the Natural Resources Code Chapters 35 and 36, which were repealed by Acts 1985, 69th Legislature, effective September 1, 1985.

The GLO proposes the amendment to §8.8(2) relating to Gas Usage Data Form. Currently, the section includes a deadline requesting any state agency that does not have a current gas usage data form to file it with the GLO on or before July 31, 1992. The proposed amendment changes the deadline to July 31 of each year.

Larry L. Laine, Chief Clerk of the GLO, has determined that for each year of the first five years the amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendments.

Mr. Laine has also determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing or administering the amendments will be updating references to legal citations, updating definitions and updating the GLO Legal Department mailing address. There will be no effect on small business. There is no anticipated cost to persons who are required to comply with the amendments as proposed

The GLO invites comments from the public during the review process and will address any comments received. Any questions or comments should be directed to Walter Talley, Texas Register Liaison, Texas General Land Office, P.O. Box 12873, Austin, TX 78711, facsimile number (512) 463-6311 or email to walter.talley@glo.state.tx.us. Written comments must be received no later than thirty (30) days from the date of publication of this notice.

The amendments are proposed under the Natural Resources Code, §31.051, which authorizes the commissioner to make and enforce rules consistent with the law.

Texas Government Code §2001.006 and Texas Natural Resources Code §§52.171 - 52.190, 31.401, and 52.133 are affected by the proposed amendments.

§8.1. Scope of Rules.

These rules shall govern the procedure for the review and approval of any contract for the acquisition of natural gas used in the production of energy by a state agency. For purposes of this chapter, state agency includes all of the entities described under Texas Government Code §2001.006 [~~Texas Civil Statutes, Article 6252-9b (Vernon 1980)~~].

§8.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (6) (No change.)

(7) State gas--Natural gas produced from land leased from:

(A) - (B) (No change.)

(C) the owner of the soil of lands subject to the Relinquishment Act of 1919 ([~~Texas Civil Statutes, Articles 5367-5379, now codified at~~] Texas Natural Resources Code, §§52.171 - 52.190 [~~§§52.171 - 52.189 (Vernon 1978 and Supp. 1992)~~]); or

(D) (No change.)

(8) (No change.)

§8.3. Contract Submission Requirements.

All contracts and requests for proposal submitted for review should be submitted to; Director - State Energy Marketing Program, Texas General Land Office, Stephen F. Austin Building, 1700 North Congress Avenue, Austin, Texas, 78701-1495, Post Office Box 12873, Austin, Texas 78711-2873 [~~the Gas Marketing Representative, General Land Office, 2656 South Loop West, Suite 500, Houston, Texas 77054-2641~~].

[(1) All correspondence should be directed to the attention of the Director of Royalty Management and Compliance, General Land Office, 1700 North Congress Avenue, Austin, Texas 78701-1495.]

[(2) Copies of all correspondence should be directed to the attention of the Gas Marketing Representative, General Land Office-Houston Office, 2656 South Loop West, Suite 500, Houston, Texas 77054-2639.]

[(3)] All contracts submitted to GLO for review must show the approval of an executive officer and of the agency submitting the contract who has authority to enter into such contracts and the approval of the submitting agency's counsel.

§8.4. Review Criteria for All Contracts.

GLO will review all new and existing contracts entered into by a state agency for the acquisition of an average volume of 100 Mcf (or the MMBtu equivalent thereof) or more per day of natural gas, calculated on an annual basis, to ensure that the agency is using natural gas produced from state lands for the production of energy to the greatest extent practical.

(1) (No change.)

(2) GLO will not approve a contract if it determines that the purchasing agency leases land for mineral development through a board for lease authorized by the Natural Resources Code, Chapter [Chapters] 34, [35, or 36,] and such agency is not using, to the greatest extent practical, resources produced from land owned by the agency to meet its energy requirements.

(3) (No change.)

§8.8. Gas Usage Data Form.

(a) Each agency will submit a gas usage data form to GLO by July 31 of each year.

(b) Any state agency that does not have a current gas usage data form on file with GLO will complete one and file it with GLO on or before July 31of each year [, 1992].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 13, 2005.

TRD-200504034
Trace Finley
Policy Director
General Land Office
Earliest possible date of adoption: October 30, 2005
For further information, please call: (512) 475-1859

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PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 53. FINANCE

The Texas Parks and Wildlife Department (TPWD) proposes new §53.91, concerning Documented Vessels, and an amendment to §53.110, concerning Marine Dealer, Distributors, and Manufacturers.

Proposed new §53.91 prescribes the process and documentation necessary to register a new or used vessel, and the process and documentation necessary to renew a registration. The proposed new section is necessary to establish procedures for improved customer service by allowing the submission of expired documentation for purposes of initial registration of a vessel. The amendment would have the effect of creating a two-year time period for a vessel owner to acquire current documentation before having to renew a registration.

The proposed new section also makes an exception to the applicability of the rule to vessels used as tenders for direct transportation between a mother ship and the shore and provides for the marking for such vessels. This portion of the proposed new section is necessary to provide for scenarios in which a vessel is used only as a ferry between a registered vessel and shore and separate vessel registration is not necessary for the purposes of the subchapter because of such use.

The proposed amendment to §53.110, concerning Marine Dealers, Distributors, and Manufacturers, consists of several actions. The proposed amendment clarifies the types of activities regulated by the subchapter and the application requirements for persons seeking to acquire a dealer's, manufacturer's, or distributor's license. Under Parks and Wildlife Code, Chapter 31, a person engaged in the business of buying, selling, selling on consignment, displaying for sale, or exchanging at least five vessels, motorboats, or outboard motors during a calendar year is a dealer and therefore required to have a license from the department. The proposed amendment is necessary to make clear the range of business activities regulated by the department under the subchapter. The current rule requires an applicant for a license to provide photographs of signage, service areas, and display areas. The proposed amendment is necessary for the sake of clarity between industry practices.

The proposed amendment also clarifies license display requirements. The current rule requires that a license be displayed at all times. The proposed amendment makes clear that the license must be displayed at all times at the location for which the license was issued. The proposed amendment is necessary for the sake of clarity.

The amendment also adds a provision to the application requirements for a marine dealer's license to address licensure of persons who display or list vessels or outboard motors not kept at a single location, such as commission-sale brokers who at any given time may be attempting to sell vessels located on the water in different parts of the state. The proposed amendment would require persons engaged in such types of businesses to furnish to the department the physical address of the office, the physical address, phone number, and management/ownership information for at least five marinas where vessels are expected to be moored. The proposed amendment also requires an applicant to provide an explanatory note if the applicant expects to keep inventory at fewer than five marinas. The amendment is necessary to ensure that the department's rules encompass the variety of business models that affected by the requirements of Parks and Wildlife Code, Chapter 31.

The proposed amendment also adds clarifying language to the list of documentation required to be maintained by licensees. Under current subsection (g), copies of any and all documents, forms, and agreements applicable to a particular sale are required to be retained for department inspection. The proposed amendment inserts additional language to clarify that acts such as consignment, transfer of ownership titling, titling and registration, and documentation activities are all considered to be a part

of sales activities. The amendment is necessary to clarify exactly what activities require a person to obtain a dealer's license.

The proposed amendment also stipulates that an applicant must sign a license agreement with the department indicating that the person agrees to abide by all applicable statutes and regulations as a condition of license issuance. The amendment is necessary to ensure that the full range of possible activities contemplated by the legislative intent of Parks and Wildlife Code, Chapter 31, is explicitly acknowledged in the rule, and to comply with the mandates of Senate Bill 489, enacted by the 79th Texas Legislature, Regular Session, which requires licensees to enter into a license agreement with the department.

The proposed amendment also establishes criteria and procedures for revocation and suspension of licenses. The amendment implements additional provisions of S.B. 489 that authorize the commission to adopt rules governing revocation and suspension of licenses. The amendment is necessary to protect the public, and the boating public in particular, by creating a mechanism for the department to prevent persons who have not met the appropriate standards from operating a business regulated by the department. The rule provides for notice and hearing when the department determines that a license should be revoked, suspended, or denied. The provisions are necessary to provide a fair opportunity to be heard to those who may lose their license, and are necessary to meet due process requirements.

The proposed amendment also prohibits the use of non-registered vessels under license to a manufacturer, dealer, or distributor from being used to advertise or promote any entity or product other than the manufacturer of the vessel or the business for which the license was issued. The proposed amendment is necessary because Parks and Wildlife Code, Chapter 31, restricts the use of vessels operated under a dealer's, distributor's, or manufacturer's license. By statute, such non-registered vessels may be operated only for purposes of testing, showing, or demonstration.

Ms. Frances Stiles, Assistant Director of Revenue, has determined that for each of the first five years that the rules as proposed are in effect, there will be minimal implications to state government as a result of enforcing or administering the rules. The department would incur costs related to administrative hearings necessitated in the event of suspension or revocation procedures. The costs are believed to be minimal, but cannot be quantified, as there is no way to predict, for purposes of estimation, the nature, scope, or range of future administrative hearings, if any, and no empirical data upon which to base to an estimate. There will be no fiscal implications for units of local government as a result of administering the rules as proposed.

Ms. Stiles also has determined that for each of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the rules as proposed will be the improved ability of the department to provide efficient customer service, protect consumers, and provide greater safety for the boating public.

Industry and regulatory trends show no adverse economic effect on small businesses, microbusinesses, or persons required to comply with the rule as proposed as these requirements echo standards established within the industry.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

Comments on the proposed rules may be submitted to Frances Stiles, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4860 (e-mail: frances.stiles@tpwd.state.tx.us).

SUBCHAPTER E. DISPLAY OF BOAT REGISTRATION

31 TAC §53.91

The amendment and new section are proposed under the authority of Senate Bill 489, 79th Texas Legislature, Regular Session, which amended Parks and Wildlife Code, Chapter 31, to authorize the commission to prescribe license requirements and establish license revocation and suspension procedures, and Parks and Wildlife Code, §31.0412, which authorizes the commission to adopt rules regarding dealer's, distributor's, and manufacturer's licenses, including application forms, application and renewal procedures, and reporting and recordkeeping requirements.

The proposed new section affects Parks and Wildlife Code, Chapter 31.

§53.91. Documented Vessels.

(a) New vessels that have applied for documentation may acquire a certificate of number and validation decal at any TPWD boat registration office. At the time of application, applicants must present:

(1) a properly completed registration application on a form supplied by the department;

(2) a copy of:

(A) the current documentation from the U. S. Coast Guard National Vessel Documentation Center (USCGNVDC) or their website in the applicant's name; or

(B) the application for initial documentation with the USCGNVDC in the applicant's name;

(3) payment of any tax required under Tax Code, Chapter 160, or verification of payment; and

(4) payment of the appropriate registration fee as required by Parks and Wildlife Code, §31.026, and §53.16 of this title (relating to Vessel, Motor, and Marine Licensing Fees).

(b) Used or previously documented vessels may acquire a certificate of number and validation decal at any TPWD boat registration office. At the time of application, applicants must present:

(1) a properly completed registration application on a form supplied by the department;

(2) a copy of:

(A) the current documentation from the U. S. Coast Guard National Vessel Documentation Center (USCGNVDC) or their website in the previous owner's name, or the applicant's name; or

(B) the lapsed documentation from the USCGNVDC or their website in the previous owner's name and the application for current documentation with the USCGNVDC in the applicant's name;

(3) payment of any tax required under Tax Code, Chapter 160, or verification of payment; and

(4) payment of the appropriate registration fee as required by Parks and Wildlife Code, §31.026, and §53.16 of this title (relating to Vessel, Motor, and Marine Licensing Fees).

(c) Renewal of certificate of number and validation decal for a documented vessel may be acquired at any TPWD boat registration office. At the time of application, applicants must present:

(1) a properly completed registration application or renewal notice on a form supplied by the department, or a hand written request;

(2) a copy of the current documentation from the U.S. Coast Guard National Vessel Documentation Center (USCGNVDC) or their website in the current owner's name;

(3) for vessels greater than 65 feet in length for the first registration renewal, verification of payment under Tax Code 151 or verification from the TPWD boat system; and

(4) payment of the appropriate registration fee as required by §53.16 of this title (relating to Vessel, Motor, and Marine Licensing Fees).

(d) A vessel used as a tender for direct transportation between a mother ship and the shore is not required to display a validation decal, provided:

(1) the vessel is equipped with propulsion machinery of less than 10 horsepower;

(2) is owned by the owner of a vessel for which a valid certificate of number has been issued and displays the registration number of that vessel followed by the suffix "1" (i.e. TX-1234-AB-1) in the manner specified by Parks and Wildlife Code, §31.031; and

(3) is used for no purpose other than direct transportation between a mother ship and the shore.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
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For further information, please call: (512) 389-4775

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SUBCHAPTER G. MARINE DEALERS, DISTRIBUTORS, AND MANUFACTURERS

31 TAC §53.110

The amendment is proposed under the authority of Senate Bill 489, 79th Texas Legislature, Regular Session, which amended Parks and Wildlife Code, Chapter 31, to authorize the commission to prescribe license requirements and establish license revocation and suspension procedures, and Parks and Wildlife Code, §31.0412, which authorizes the commission to adopt rules regarding dealer's, distributor's, and manufacturer's licenses, including application forms, application and renewal procedures, and reporting and recordkeeping requirements.

The proposed amendment affects Parks and Wildlife Code, Chapter 31.

§53.110. Marine Dealer, Distributors, and Manufacturers.

(a) The following words and terms, when used in this subchapter shall have the following meanings, unless the context clearly indicates otherwise. Consignment--The sale or offer for sale by a person other than the owner under terms of a verbal or written authorization from the owner.

(b) Any person or entity, including a person or entity purporting to be a broker or brokerage house, who acts as an intermediary or assists in the sale, sale on consignment, display for sale, purchase, trade, or transfer of a vessel, motorboat, or outboard motor in exchange for a fee, commission, or other consideration is considered to be engaged in the business of buying, selling, selling on consignment, displaying for sale, or exchanging a vessel for the purposes of this subchapter. Any person or entity, including a person or entity purporting to be a broker or brokerage house, engaged in any activity described above is subject to the provisions of this subchapter.

(c) [~~(b)~~] A person shall apply for a license as a dealer by submitting a properly completed, department-approved application form, accompanied by the following:

(1) the fee prescribed by law for each license requested;

(2) photographs clearly showing:

(A) the permanent sign at the location designated in the application as the applicant's permanent place of business, clearly indicating the name of the business;

(B) the front of the business with public access; and

(C) space sufficient for office, service area (not applicable to floating inventory or listings), and display of vessels, motorboats, or outboard motors (not applicable to floating inventory or listings) [~~products~~];

(3) a copy of the Tax Permit issued by the Comptroller under Chapter 151, Tax Code;

(4) verification of all assumed name(s), if applicable, in the form of assumed name certificate(s) on file with the Secretary of State or county clerk;

(5) a photocopy of the current driver's license or Department of Public Safety identification of the owner, president or managing partner of the business; and

(6) a list of dealer agreements; and

(7) if the applicant is to maintain floating inventory or listings at a location other than that designated as the applicant's permanent place of business, a record of at least five marinas where floating inventory or listings are expected to be displayed. If the applicant contemplates using less than five marinas, then the application shall include an explanatory statement. The record must identify, at a minimum, the name, physical address, and telephone for each marina.

(d) [~~(c)~~] A person shall apply for a license as a distributor or manufacturer by submitting a properly completed, department-approved application form accompanied by the following:

(1) the fee prescribed by law for each license requested;

(2) verification of all assumed name(s), if applicable, in the form of assumed name certificate(s) on file with the Secretary of State or county clerk;

(3) a complete list of manufacturers represented by a distributorship; and

(4) a complete list of distributors, dealers, and manufacturers.

(e) [~~(d)~~] The department may issue a license under this subchapter if:

(1) the applicant submits a complete application form and required attachments; and

(2) the applicant signs a department-provided license agreement [~~affidavit~~] stating that the applicant agrees to comply with all applicable state laws, [~~full compliance with state law~~] including Occupation Code, Chapter 2352, concerning Franchise Agreements, when required.

(f) [~~(e)~~] A license holder shall notify the department in writing within 10 days if there is any change of:

(1) ownership;

(2) business name;

(3) physical location;

(4) dealer agreement;

(5) distributors, dealers, or representatives; or

(6) address or phone information.

(g) [~~(f)~~] The licenses issued under this subchapter to dealers must be publicly displayed at all times in the place of business for which the license is issued.

(h) [~~(g)~~] A license holder must keep a complete record available for inspection in the place of business relating to all vessels, motorboats, and outboard motors purchased, sold, or displayed for sale for a minimum of 24 months. Content of records must include the:

(1) date of purchase;

(2) date of sale;

(3) hull identification number and/or motor identification number;

(4) name and address of person selling to the dealer;

(5) name and address of person purchasing from the dealer;

(6) name and address of selling dealer or individual if vessel and/or outboard motor is offered for sale by consignment;

(7) a copy of the vessel/outboard motor title/registration receipt;

(8) copies of any and all documents, forms, and agreements applicable to a particular sale, consignment, listing, transfer of ownership, titling, titling and registration, or documentation through the U.S. Coast Guard, including, but not limited to title applications, work-up sheets, Manufacturer's Certificates of Origin, titles or photocopies of the front and back of titles, factory invoices, sales contracts, retail installment agreements, buyer's orders, bills of sale, waivers, or other agreements between the seller and purchaser; and

(9) copies of written consignment agreements or power of attorney for vessels, motorboats, or outboard motors.

(i) The department may suspend or revoke a license under this subchapter if:

(1) the licensee has been finally convicted or received deferred adjudication for a violation of Parks and Wildlife Code, Chapter 31, or a rule adopted under that chapter;

(2) the licensee has violated Parks and Wildlife Code, Chapter 31, or a rule adopted under that chapter;

(3) the licensee made a false or misleading statement in connection with the original or renewal application for the license, either in the formal application itself or in any other written instrument relating to the application submitted to the commission or its officers or employees;

(4) the licensee is indebted to the state for taxes, fees, or payment of penalties imposed by Parks and Wildlife Code, Chapter 31, or a rule adopted under that chapter;

(5) the applicant or licensee was previously the holder of a license issued under this subchapter that was revoked for cause and never reissued by the department, or that was suspended for cause and the terms of the suspension have not been fulfilled;

(6) the applicant or licensee was previously a partner, stockholder, director, or officer controlling or managing a partnership, corporation, or store location whose license issued under this subsection was revoked for cause and never reissued, or was suspended for cause and the terms of the suspension have not been fulfilled;

(7) the business does not intend to be open to all members of the public nor during normal business hours;

(8) the licensee or an employee of the licensee has obtained, or attempted to obtain, any money, commission, fee, barter, exchange or other compensation by fraud, deception or misrepresentation; or

(9) the licensee or an employee of the licensee is finally convicted or receives deferred adjudication for a violation of any federal or state law relating to the sale, distribution, financing, registration, taxing, or insuring of a vessel.

(j) Provisions governing the revocation or suspension of a license are as follows.

(1) Before suspending or revoking a license under this subchapter, the staff of the executive director of the department (executive director) shall provide notice by certified mail to the licensee's last known address of the department's intent to revoke or suspend the license. Within 30 days of the date of the letter, the licensee may request an administrative hearing. The hearing request must be in writing and addressed to: Manager of Boat Titling, Registration, and Marine Licensing, Texas Parks and Wildlife Department, 4200 Smith School Rd., Austin, TX 78744. For a hearing request to be valid, the department must receive the hearing request within 30 days of the date of the letter notifying the licensee of the department's intent to revoke or suspend the license. If no hearing request is received within this time frame, the executive director shall make a final decision whether to revoke or suspend the license.

(2) Timely hearing requests shall be referred by the department to the State Office of Administrative Hearings (SOAH) for adjudication.

(3) The department shall provide notice of the hearing date to the licensee by certified mail at the licensee's last known address at least ten days prior to the hearing date.

(4) The licensee shall be responsible for all hearing costs to SOAH, including but not limited to transcript and court reporting costs incurred by the department. Prior to the beginning of the hearing, at the request of department, the SOAH judge shall require the licensee to post a bond in an amount set by the SOAH judge, payable to the department and conditioned on prompt payment of hearing costs. Failure

to post the requested bond prior to the start of the hearing shall result in default by the licensee.

(5) The failure of the licensee to appear at the hearing shall entitle the department's staff to request issuance of a default proposal for decision or order by the judge.

(6) At the conclusion of the hearing, SOAH shall prepare a proposal for decision in accordance with SOAH rules. The proposal for decision shall be submitted to the department's deputy executive director for administration, who will make the final decision on whether to revoke or suspend the license.

(k) It is an offense for any person to provide or use a vessel licensed under the provisions of this subchapter for advertising or promoting any entity or product other than the manufacturer of the vessel or a business licensed under this subchapter.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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CHAPTER 57. FISHERIES
SUBCHAPTER K. SCIENTIFIC AREAS

31 TAC §57.921

The Texas Parks and Wildlife Department (TPWD) proposes an amendment to §57.921, concerning the Redfish Bay State Scientific Area (RFBSSA). At its August 25, 2005, public meeting, the Texas Parks and Wildlife Commission directed staff to propose two different, but complementary, regulatory approaches to conservation of seagrasses within the RFBSSA. The approach proposed in §57.921(e) and (f) would prohibit the uprooting of seagrasses throughout the entire area of the RFBSSA, and would define seagrass to include the five species prevalent within the RFBSSA. The approach proposed in §57.921(d), (g), and (h) would designate three vulnerable seagrass meadows within the RFBSSA where operation of a vessel driven by a submerged propeller would be prohibited, subject to certain exceptions.

Submerged seagrass meadows are a dominant, unique subtropical habitat in many Texas bays and estuaries. These highly evolved marine flowering plants play critical roles in the coastal environment, including nursery habitat for estuarine fisheries, as a major source of organic biomass for coastal food webs, effective agents for stabilizing coastal erosion and sedimentation, and major biological agents in nutrient cycling and water quality processes. Recent studies show that seagrasses are sensitive to nutrient enrichment and water quality problems, as well as physical stress from human disturbances. As a result, many Texas scientists, resource managers and environmentally aware citizens have concerns about the ecosystem health of these seagrass resources.

In January 1999, the Texas Parks and Wildlife Department (TPWD), the Texas General Land Office and the Texas Natural Resource Conservation Commission (now, the Texas Commission on Environmental Quality) published 'The Seagrass Conservation Plan for Texas.' The Seagrass Conservation Plan recommends that these three agencies take measures within their jurisdictions to conserve this critical coastal resource. The Seagrass Conservation Plan identified propeller scarring as a factor in seagrass destruction. TPWD created the RFBSSA by rule in 2000 to study seagrass resources and protect them from the effects of boat propellers.

The rule TPWD adopted for the RFBSSA in 2000 focused on education and voluntary compliance as the principal means of protecting seagrass resources. Unfortunately, despite extensive and costly efforts by TPWD over the past five years, the voluntary approach has proven ineffective. Accordingly, TPWD is now proposing mandatory measures to deal with the problem.

The proposed provisions of §57.921(e) - (f) would define 'seagrass plant' by identifying the five marine flowering plant species that are prevalent in the RFBSSA. The proposed amendment also would prohibit uprooting or digging out seagrasses except as allowed under a General Land Office coastal lease or otherwise permitted under state law. The prohibition would apply throughout the entire RFBSSA (32,144 acres) as delineated in proposed §57.921(c).

The proposed provisions of §57.921(d), (g), and (h) would designate three areas within the RFBSSA where the operation of a vessel driven by a submerged propeller (other than an electric trolling motor propeller) would be prohibited, except under specific situations. Other types of vessels that do not utilize submerged propellers (e.g., jet-driven vessels and airboats) would still be lawful within the no-prop areas. The three areas and the condition of the areas are described generally as follows:

1. The area of Estes Flats called Redfish Cove (623 acres). This consists of two smaller sub-coves, Trout Bayou and Turtle Bayou. This flat is one of the most severely impacted by propeller scarring in this system. Turtle Bayou has a navigable channel that connects the Gulf Intracoastal Waterway (GIWW) and eastern side of Traylor Island, which would remain outside the no-prop zone;

2. The Terminal Flats area (704 acres), which represents one of the most extensive and fragmented turtle grass beds in Aransas Bay and one of the most frequently used areas for shortcutting between the GIWW and the Aransas Pass to Port Aransas Boat Channel. Turtlegrass is a climax species that takes up to five years to regenerate when affected.

3. The Brown and Root Flat area (2,992 acres), which lies just south of the Port Aransas to Aransas Pass causeway. The southernmost area of this flat is home to another large, substantially intact turtlegrass flat. This very shallow area has less boating traffic than other areas but is particularly susceptible to scarring.

There will be ingress and egress lanes or zones in all three no-prop zones, which will facilitate boaters using the areas by drifting, wading, poling, or use of a trolling motor.

Mr. Robin Riechers, Director of Science and Policy, has determined that for each of the first five years that §57.921(d) - (h) as proposed are in effect, there should be no additional costs, reductions in costs, or increases in or loss of revenue to state or local governments as a result of enforcing or administering proposed §57.921(d) - (h).

Mr. Riechers also has determined that for each of the first five years §57.921(d) - (h) as proposed is in effect, the public benefit anticipated as a result of enforcing or administering §57.921(d) - (h) as proposed will be the protection of an important ecosystem enjoyed by the public. Seagrasses are an important Texas resource on their own; moreover, they contribute to estuarine productivity for key recreational and commercial species of fish and shellfish. Destruction of seagrasses in the RFBSSA by boat propellers has been well documented. See, e.g., Montagna, Holt et al., Characterization of Anthropogenic and Natural Disturbance on Vegetated and Unvegetated Bay Bottom Habitats in the Corpus Christi Bay Natural Estuary Program Study Area (1998); Pulich et al., Current Status and Historical Trends of Seagrass in the Corpus Christi Bay National Estuary Program Study Area (1997). Proposed §57.921(d) - (h) will protect seagrasses within the RFBSSA and the ecosystem that seagrasses support. This will in turn benefit commercial and recreational anglers and all those who use biological resources in the RFBSSA for income or recreation.

There may be minimal adverse economic effect on small businesses, microbusinesses, or persons required to comply with §57.921(d) - (h) as proposed. Section §57.921(d) - (h) as proposed would affect recreational anglers, boaters, and commercial fishermen or guides who use or traverse the area; however, proposed §57.921(d), (g), and (h) would affect users somewhat differently than proposed §57.921(e) - (f).

The potential additional costs of proposed §57.921(d), (g), and (h) would be associated with traversing the no-prop areas within the RFBSSA (if a person chooses to go around a no-prop area rather than traversing it, the additional cost will be three to seven minutes at 30 mph and less than one gallon of fuel for a 120 hp motor).

For purposes of explanation, the department examines a worst-case scenario involving a hypothetical user traversing a no-prop zone. The worst-case scenario does not consider the availability of ingress and egress lanes or zones (which would be encountered if one were attempting to traverse the area and where propeller use would be allowed). Using the worst-case scenario approach, if a user entered the Estes Cove area on one boundary edge with the intention of reaching the boundary edge farthest from the point of entry, the distance traversed would be approximately 0.75 nautical miles. Under current rules (i.e., voluntary no-prop zone), if the user chose to traverse the zone by means of a submerged propeller at typical/conservative run speeds for vessels routinely used in these areas (e.g., 30 mph), the crossing would take approximately 1.8 minutes. At a typical electric trolling-motor speed of 2 mph, the same crossing would take approximately 25 minutes. At a typical poling speed of 1 mph, the same crossing would take approximately 52 minutes. Applying the same scenario to Terminal Flats would yield the following: the distance traversed from boundary to boundary would be approximately one nautical mile. By submerged propeller, the crossing would take approximately 2.3 minutes; by trolling motor, approximately 35 minutes; and by pole, approximately 69 minutes. For Brown and Root Flats, the boundary-to-boundary distance is approximately three nautical miles, and the crossing by submerged propeller would take approximately 6.9 minutes; by trolling speed, approximately 103 minutes (i.e., one hour and 43 minutes), and by pole, approximately 3 hours and 26 minutes. Of course, the slow-speed traverse of all three areas can be avoided by using neighboring deep-water channels at high speeds, meaning boaters can skirt the areas at the cost of only a few minutes of time and fuel. There would be a large zone in the middle of Brown and Root Flats where submerged propellers would be lawful (see §57.921(h)(3)(E)). If a user chooses to invest in a trolling motor and/or a pole in order to traverse a no-prop zone, the incurred cost would be approximately $100 for a pole and $350 for a trolling motor (depending on make and model); however, the department notes that trolling motors and push poles are common pieces of equipment and currently may be found on board some vessels.

The potential additional costs of proposed §57.921(e) and (f) would be associated with avoiding the uprooting of seagrasses within the RFBSSA. If a person is attempting to traverse an area within the RFBSSA where the use of a propeller would uproot seagrasses, that person must do so by use of a trolling motor, pole, or some means other than a submerged propeller. If a user chooses to invest in a trolling motor and/or a pole, the incurred cost would be approximately $100 for a pole and $350 for a trolling motor (depending on make and model); however, the department notes that trolling motors and push poles are common pieces of equipment and currently may be found on board some vessels. The average maximum cost in order to comply is estimated to be $350 per person (vessel), which is based on the average cost of $350 per trolling motor (the amount of time and expense required to go around rather than traverse areas where seagrasses would be uprooted cannot be quantified because that calculation depends upon variables such as tide, the depth at which a propeller is operated, specialized equipment, and operator experience).

Small and microbusiness effects. There should be no difference between the largest and smallest businesses affected by §57.921(d) - (h) on a per-vessel cost basis. If a business owns multiple vessels then they may incur the cost multiple times but it would be equal to the cost of compliance times the number of vessels owned. For example, the maximum cost of compliance to an owner of two vessels would be $700. There is no feasible way to reduce the effect on small or micro-businesses, and it is likely that all businesses potentially affected meet the definition of a small or micro-business in Government Code, §2006.002.

Although the department has determined that the requirements of Government Code, §2001.0225, do not apply to this rulemaking, a regulatory impact analysis is nonetheless provided as follows:

The problem that proposed §57.921(d) - (h) is intended to address is seagrass destruction and is necessary because years of efforts to achieve voluntary compliance have not worked and the problem continues to exist. The benefits and costs of the proposed §57.921(d) - (h) are discussed elsewhere in this preamble. Alternative Measures Considered - The previous educational effort regarding seagrass protection along the Texas coast and specifically the RFBSSA combined with the voluntary no-prop zones were considered as an alternative to continue in the area. Based on public input and the compliance rate observed in the local area there is a need for measures to ensure greater protection of seagrass. The department is considering two different regulatory approaches: the prohibition of seagrass uprooting (proposed §57.921(e) and (f)) and establishment of mandatory no-propeller zones (proposed §57.921(d), (g), and (h)). The data and methodology used were various scientific studies, Coastal Fisheries Division data, and consideration of public comment.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rule as proposed (§57.921(d) - (h)) will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule (§57.921(d) - (h)).

Comments on the proposed amendment (§57.921(d) - (h)) may be submitted to Jerry L. Cooke, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4492; e-mail: jerry.cooke@tpwd.state.tx.us.

The amendment (§57.921(d) - (h)) is proposed under Parks and Wildlife Code, §81.501, which authorizes the commission to create state scientific areas for the purposes of education, scientific research, and preservation of flora and fauna of scientific or educational value. Section 81.502(c) authorizes adoption of rules and regulations necessary for the management and protection of scientific areas. Parks and Wildlife Code, Chapter 13, Subchapter B, authorizes the commission to adopt regulations governing state scientific areas.

The proposed amendment (§57.921(d) - (h)) affects Parks and Wildlife Code, Chapter 13, Subchapter B, and Chapter 81, Subchapter F.

§57.921. Redfish Bay State Scientific Area.

(a) Purpose: The Redfish Bay State Scientific Area is established for the purpose of education, scientific research, and preservation of flora and fauna of scientific or educational value.

(b) Term: July 1, 2005 through June 30, 2010.

(c) Boundaries:

(1) 27 59.538N; 097 3.858W (Northern extremity of island forming northern boundary of Estes Cove);

(2) 27 59.232N; 097 4.434W (Intersection of Gulf Intracoastal Waterway (GIWW) and Mouth of Cove Harbor);

(3) 27 55.986N; 097 6.804W (GIWW at Rocky Ridge);

(4) 27 53.88N; 097 8.088W (intersection of GIWW and Aransas Pass Shrimp Boat Channel);

(5) 27 53.058N; 097 8.502W (Intersection of GIWW and Brown and Root Channel);

(6) 27 52.32N; 097 9.486W (Intersection of GIWW and mouth of Redfish Bay Terminal);

(7) 27 49.092N; 097 11.46W (Near the southern extremity of Dagger Island where the Corpus Christi Ship Channel and the GIWW intersect);

(8) 27 50.40 N; 097 3.32 W (Intersection of Lydia Ann Channel and Corpus Christi Ship Channel);

(9) 27 52.42 N; 097 2.47 W (A point in Lydia Ann Channel);

(10) 27 55.02 N; 097 03.46 W (East of the mouth of Corpus Christi Bayou).

(d) No person may move, remove, deface, alter, or destroy any sign, depth marker or other informational signage placed by the department [~~within, or~~] to delineate boundaries[~~,~~] of the Redfish Bay State Scientific Area or to designate specific zones within the area.

(e) In this section, "seagrass plant" means individuals from the following marine flowering plant species: Clover Grass (Halophila engelmanni), Manatee Grass (Syringodium filiformis), Shoalgrass (Halodule beaudettei), Turtle Grass (Thalassia testudinum), and Widgeon Grass (Ruppia maritima).

(f) No person shall cause or allow any rooted seagrass plant to be uprooted or dug out from the bay bottom within the Redfish Bay State Scientific Area, except as may be permitted by a coastal lease issued by the Texas General Land Office or otherwise permitted under state law.

(g) Within the zones described in subsection (h) of this section, no person may operate any vessel driven by a submerged propeller, except:

(1) in the event of an emergency which threatens human health and safety and which necessitates immediate entrance to or exit from the area;

(2) electric trolling motors;

(3) within ingress and egress lanes or zones marked by the department;

(4) for law enforcement activities;

(5) for permitted scientific research activities; or

(6) as provided in Parks and Wildlife Code, §81.504.

(h) The provisions of subsection (g) of this section apply to the zones described in paragraphs (1) - (3) of this subsection.

(1) Estes Cove. Other than the two ingress and egress lanes described in subparagraphs (A) and (B) of this paragraph, all waters enclosed by a boundary beginning at a point on the edge of the GIWW 27-58-10.67N 097-05-12.10W, southeasterly to a point at the Junction of Big Cut (Yucca Cut) and Traylor Island 27-57-9.47N 097-04-21.32W, northerly along Traylor Island to Turtle Bayou 27-58-25.46N 097-04-3.60W, westerly to the junction with a man-made channel at 27-58-24.48N 097-04-40.47W, northerly along the southern edge the man-made channel to 27-58-37.44N 097-04-51.30W, then southerly along the GIWW to the point of beginning.

(A) An ingress and egress lane within the mandatory no-propeller zone beginning at a point on a man-made channel 27-58-24.48N 097-04-40.47W southwesterly to a point on the southern boundary of the mandatory no-propeller zone 27-57-58.96N 097-05-02.57W.

(B) An ingress and egress lane within the mandatory no-propeller zone beginning on the southern boundary at a point 27-57-44.60N 097-04-50.77W thence extending generally northeasterly along the eastern edge of Talley Island to a point 27-57-51.78N 097-04-33.78W, northeasterly to a point 27-58-00.12N 097-04-23.15W, and northeasterly to a point of ending at 27-58-06.68N 097-04-19.54W.

(2) Terminal Flat. Other than the two ingress and egress lanes described in subparagraphs (A) and (B) of this paragraph, all waters enclosed by a boundary beginning at a point on the edge of the Gulf Intra-Coastal Water Way (GIWW) 27-54-52.80N 097-07-24.80W, southerly to a point on the GIWW 27-53-55.00N 097-07-58.30W, easterly to a point on the Aransas Shrimp Channel 27-53-39.80N 097-07-01.80W, northerly to a point just south of the Terminal Causeway 27-54-53.00N 097-06-43.70W, then westerly and parallel to the Terminal Causeway to the point of beginning on the GIWW.

(A) An ingress and egress lane within the mandatory no-propeller zone beginning at a point just south of the Terminal Causeway 27-54-53.40N 097-07-13.95W, south to point 27-54-26.13N 097-07-13.46W, thence southeasterly to a point on the Aransas Shrimp Channel 27-53-50.54N 097-07-40.70W.

(B) An ingress and egress lane within the mandatory no-propeller zone beginning on the eastern boundary at a point

27-54-15.78N 097-06-53.34W, west by northwesterly to a point 27-54-26.13N 097-07-13.46W.

(3) Brown and Root Flat. Other than the five ingress and egress lanes or zones described in subparagraphs (A) - (E) of this paragraph, all waters enclosed by a boundary beginning at a point off the southeastern tip of Harbor Island 27-50-19.36N 097-07-47.78W, northeasterly to a point on the edge of the Sailboat Channel which runs parallel to Highway 361 27-52-46.60N 097-06-06.6W, southeasterly along the southern edge of the Sailboat Channel to a point 27-51-47.64N 097-05-06.59W, south to a point on the edge of the Corpus Christi Ship Channel 27-50-32.17N 097-04-58.46W, westerly to a point on Harbor Island 27-50-19.33N 097-06-11.08W then west to the point of beginning at the southeastern tip of Harbor Island.

(A) A ingress and egress lane within the mandatory no-propeller zone beginning at a point on a man-made channel 27-51-09.06N 097-07-13.48W, easterly to an endpoint on the man-made channel at 27-50-58.87N 097-06-49.46W.

(B) An ingress and egress lane within the mandatory no-propeller zone beginning at a point on a man-made channel 27-51-04.09N 097-07-1.80W, southeasterly to a point on the man-made channel 27-50-32.01N 097-06-43.98W.

(C) An ingress and egress lane within the mandatory no-propeller zone beginning at a point on a Sailboat channel 27-52-10.11N 097-05-30.24W southeasterly to a point on the man-made channel 27-51-54.79N 097-05-39.40W, southeasterly to a point near the end of the man-made channel 27-51-30.81N 097-05-52.39W.

(D) An ingress and egress lane within the mandatory no-propeller zone beginning at a point on a man-made channel 27-51-42.70N 097-05-46.01W, westerly to an endpoint on the man-made channel 27-51-44.80N 097-06-03.86W.

(E) A zone, irregular in shape, within the mandatory no-propeller zone, all waters enclosed by a boundary beginning at a point 27-50-29.76N 097-06-42.57W, northeasterly to a point 27-50-44.61N 097-06-03.71W, northeasterly to a point 27-51-01.35N 097-05-36.02W, northerly to a point 27-51-32.92N 097-05-43.83W, southwesterly to a point 27-51-30.81N 097-05-52.39W, southwesterly to a point 27-51-16.27N 097-06-24.97W, southeasterly to a point 27-50-47.97N 097-06-06.04W, southwesterly to a point 27-50-32.01N 097-06-43.98W, then southeasterly back to the point of beginning.

(i) [~~(e)~~] The penalty for violation of this section is prescribed by Parks and Wildlife Code, §13.112.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 19, 2005.

TRD-200504152
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Earliest possible date of adoption: October 30, 2005
For further information, please call: (512) 389-4775

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CHAPTER 58. OYSTERS AND SHRIMP

The Texas Parks and Wildlife Department proposes amendments to §§58.102, 58.150, and 58.160, concerning the Statewide Shrimp Fishery Proclamation; §§58.203, 58.205, 58.206, 58.208, and 58.209, concerning Statewide Crab Fishery Proclamation; and §58.302, concerning the Finfish Fishery Proclamation. The amendments are necessary as a result of the department's review process under the provisions of Government Code, §2001.039, which requires each state agency to perform a review of all regulations not less than every four years and to either readopt, amend, or repeal each rule as necessary and appropriate. As a result of the review, the department has determined that rulemaking is necessary to remove unnecessary language which is redundant to language in federal regulations, clarify language and terminology, and correct outdated reference dates.

The proposed amendment to §58.102, concerning Definitions, amends the definition of Turtle Excluder Device (TED) to adopt through referencing the citation of the Federal Regulation which describes the approved TED devices. The proposed amendment to §58.150, concerning Sale, Purchase, and Handling of Shrimp--General Rules, clarifies that unless a commercial shrimp boat license holder sells his catch to a licensed person required to report the sale to the department, the commercial shrimp boat license holder is required to report the sale to the department himself. The proposed amendment to §58.160, concerning Taking or Attempting To Take Shrimp (Shrimping)--General Rules, removes redundant language, an expired effective date, and adopts through reference the Federal regulations that describe the approved Bycatch Reduction Devices (BRD) and Turtle Excluder Devices (TED) that are required in inside and outside waters. Further, the proposal removes the language describing approved BRD that now has been included through reference of the Federal Regulations. The rationale and justifications for the use of TEDs and BRDs in shrimp trawls is the same as previously stated in the proposed rulemaking published in the July 14, 2000, issue of the *Texas Register* (25 TexReg 6666), which was adopted in the October 6, 2000, issue of the *Texas Register* (25 TexReg 10152). Due to joint law enforcement agreements between state and federal enforcement officials the need to have the language specifically repeated in state law is not deemed necessary.

The proposed amendment to §58.203, concerning Licensing, and §58.205, concerning Display of License, clarifies that when fishing crab fishermen are required to have the "display license" rather than a metal "plate" clearly visible from both sides of the boat. This allows for the display license to be made from any material and thus replaces the language regarding a metal plate. The proposed amendment to §58.206, concerning Issuance and Renewal of Commercial Crab Fisherman's License, removes language needed to initiate the limited entry program for the crab fishery and expired effective dates. The proposed amendment to §58.208, concerning Limit on Number of Licenses Held; Designated License Holder, clarifies that businesses or partnerships must designate a person to hold their license. The proposed amendment to §58.209, concerning License Suspension and Revocation, removes an expired effective date and the conditional tone of the requirement that crab fishermen must obtain a license before fishing.

The proposed amendment to §58.302, concerning Display of License, clarifies that when fishing finfish fishermen are required to have the "display license" rather than a metal "plate" clearly visible from both sides of the boat. This allows for the display license to be made from any material and thus replaces the language regarding a metal plate.

Robin Riechers, Director of Science and Policy, has determined that for each of the first five years that the proposed rules are in effect, there will be no fiscal implications to local governments as a result of administering or enforcing the proposed rules. There will be reduced costs associated with state government as a result of these rules. Assuming that there are changes in the federal TED and BRD requirements in the next five years the actual cost to the state will be reduced as it will require fewer administrative costs to adopt the new rules through referencing a new date in the federal rules versus trying to mirror exactly the federal rules into state rules.

Mr. Riechers also has determined that for each of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the amendments as proposed will be rules that are clearer, more concise and accurate. The requirements stated in the rules are not changing but the rules should be clearer and more understandable, causing less confusion for fishermen and thus greater compliance.

There will be no adverse economic effects on small businesses, microbusinesses, or persons required to comply with the rules as proposed, because the proposed rules adopt the current rules through reference and the other changes are clarifications and removal of stale effective dates.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

Comments on the proposal may be submitted to Jerry L. Cooke, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4492; e-mail: jerry.cooke@tpwd.state.tx.us.

SUBCHAPTER B. STATEWIDE SHRIMP FISHERY PROCLAMATION

31 TAC §§58.102, 58.150, 58.160

The amendments are proposed under the authority of Parks and Wildlife Code (PWC), Chapter 61, which provides the commission with authority to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life and the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life; Chapter 66, which requires reporting the sale of aquatic product within the state; Chapter 77, which provides the commission with authority to regulate the catching, possession, purchase, and sale of shrimp; and Chapter 78, which requires the commission to adopt any rules necessary for the administration of the program.

The proposed amendments affect Parks and Wildlife Code, Chapters 61, 66, 77, and 78.

§58.102. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (29) (No change.)

(30) Turtle Excluder Device (TED)--a device designed to be installed in a shrimp trawl forward of the cod end (tail bag) for the purpose of excluding sea turtles from the net and that meets the dimensions and specifications of an approved device as described in 50 CFR Part 223 §223.207 on May 15, 2005.

§58.150. Sale, Purchase, and Handling of Shrimp--General Rules.

(a) Reporting by licensee. A licensee under this section who catches and then sells [~~lands~~] shrimp in the state to individuals other than shrimp house operator, wholesale fish dealer, retail fish dealer, wholesale truck dealer, retail truck dealer, bait dealer, bait-shrimp dealer shall submit to the department by the tenth day of each month, the report required under Parks and Wildlife Code, §66.019. [~~on forms furnished by the department, a report stating:~~]

[~~(1) the number of pounds of shrimp landed at points in the state by the licensee during the reporting period;~~]

[~~(2) the water from which the shrimp were taken; and~~]

[~~(3) the names of the species of shrimp.~~]

(b) - (c) (No change.)

§58.160. Taking or Attempting To Take Shrimp (Shrimping)--General Rules.

(a) - (b) (No change.)

(c) All commercial shrimp boats are required to exhibit the vessel's documentation or registration number on the port and starboard sides of the deckhouse or hull and on an appropriate weather deck. The number in block [~~Arabic~~] numerals in contrasting color to the background must be at least 18 inches in height on vessels over 65 feet and ten inches in height for all other vessels and be permanently attached.

(d) (No change.)

(e) Bycatch Reduction Device (BRD) requirements.

(1) Except as otherwise provided in this section, [~~effective September 1, 2001,~~] all shrimp boats must have an approved BRD installed in each trawl that is rigged for fishing. A trawl is rigged for fishing if it is in the water, or if it is shackled, tied, or otherwise connected to any trawl door or board, or to any tow rope, cable, pole or extension, either on board or attached in any manner to the shrimp boat.

(2) - (3) (No change.)

(4) Approved BRDs:

(A) In outside waters: Any BRD that meets the dimensions and specifications of an approved device as described in 50 Code Federal Regulations (CFR) Part 622 §622.41(h) on May 15, 2005.

(B) In inside waters:

(i) Any BRD (other than an extended funnel devices similar to "Jones/Davis" and "large mesh"devices) that meets the dimensions and specifications of an approved device as described in 50 Code Federal Regulations (CFR) Part 622 §622.41(h) on May 15, 2005; or

(ii) An extended funnel device similar to "Jones/Davis", "large mesh" constructed and installed as follows:

(I) Extension Material. The small-mesh sections used on both sides of the large-mesh escape section are constructed of No. 18 nylon webbing with a mesh size of 6-7/8 inches over 5 stretched meshes. The front section is 120 meshes around by 6-1/2 meshes deep. The back section is 120 meshes around by 23 meshes deep.

(II) Large-Mesh Escape Section. The large-mesh escape section is constructed of webbing with a mesh size

of 40-50 inches over 5 stretched meshes. This section is cut on the bar to form a section that is 15 inches by 75 inches in circumference. The leading edge is attached to the 6-1/2-mesh extension section and the rear edge is attached to the 23-mesh extension section.

(III) Funnel. The funnel is constructed of with a mesh size of 6-7/8 inches over 5 stretched meshes, No. 18 depth-stretched and heat-set polyethylene webbing. The circumference of the leading edge is 120 meshes and the back edge is 78 meshes. The short side of the funnel is 30 to 32 inches long and the opposite side of the funnel extends an additional 20 to 22 inches. The circumference of the leading edge of the funnel is attached to the forward small-mesh section three meshes forward of the large-mesh escape section and is evenly sewn, mesh for mesh, to the small-mesh section. The after edge of the funnel is attached to the after small-mesh section at its top and bottom eight meshes back from the large-mesh escape panel. Seven meshes of the top and seven meshes of the bottom of the funnel are attached to eight meshes at the top and bottom of the small-mesh section, such eight meshes being located immediately adjacent to the top and bottom centers of the small-mesh section on the side of the funnel's extended side. The extended side of the funnel is sewn at its top and bottom to the top and bottom of the small-mesh section, extending at an angle toward the top and bottom centers of the small-mesh section.

(IV) Semi-Rigid Hoop. A 24-inch diameter hoop constructed of plastic-coated trawl cable, swaged together with a 3/8-inch micropress sleeve, is installed five meshes behind the trailing edge of the large mesh section. The extension webbing must be laced to the ring around the entire circumference and must be equally distributed on the hoop, that is, 30 meshes must be evenly attached to each quadrant.

(V) Installation. The extended funnel BRD is attached 8 inches behind the posterior edge of the TED. If it is attached behind a soft TED, a second semi-rigid hoop, as prescribed in subclause (IV) of this clause, must be installed in the front section of the BRD extension webbing at the leading edge of the funnel. The cod end of the trawl net is attached to the trailing edge of the BRD.

(iii) Expanded Mesh. The expanded mesh BRD is constructed and installed exactly the same as the standard size extended funnel BRD, except that one side of the funnel is not extended to form a lead panel.

~~[(A) Fish Eye-like devices (similar to "Fish Eye" or "Sea Eagle") minimum construction and installation requirements.]~~

~~*[(i)* Frame must be constructed of aluminum or steel rod at least 1/4 inch in diameter.]~~

~~*[(ii)* The escape opening cannot have a diameter any smaller than 5.0 inches, and the total escape opening area smaller than 36.0 square inches.]~~

~~*[(iii)* Beginning of the opening may not be placed more than 12 meshes to either side of the centerline of the tailbag.]~~

~~*[(iv)* Frame must be installed in the cod end of the trawl to create an escape opening in the trawl, facing in the direction of the mouth of the trawl, no further forward than 11 feet from the cod end tie-off rings.]~~

~~*[(v)* Opening may be placed forward of, but may not be placed within 24 inches aft of the lazy line attachment system (i.e. any mechanism, such as elephant ears or choker straps, used to attach the lazy line to the cod end).]~~

~~*[(vi)* Opening must not be obstructed while trawl is being towed.]~~

~~[(B) Extended Funnel devices (similar to "Jones/Davis", "large mesh", and "Extended Funnel devices") minimum construction and installation requirements.]~~

~~*[(i)* These devices must be attached between the Turtle Excluder Device (TED) of the trawl and the tailbag, using a functional tailbag length no longer than 15 feet.]~~

~~*[(ii)* Jones-Davis BRD must contain all of the following:]~~

~~*[(I)* Webbing extension. The webbing extension must be constructed from a single piece of No. 30 nylon webbing with a mesh size of 8-1/4 inches over 5 stretched meshes measuring 42 meshes by 120 meshes. A tube is formed from the extension webbing by sewing the 42-mesh side together.]~~

~~*[(II)* 28-inch cable hoop. A single hoop must be constructed of 1/2-inch steel cable 88 inches in length. The cable must be joined at its ends by a 3-inch piece of 1/2-inch aluminum pipe and pressed with a 3/8-inch die to form a hoop. The inside diameter of this hoop must be between 27 and 29 inches. The hoop must be attached to the extension webbing 17-1/2 meshes behind the leading edge. The extension webbing must be quartered and attached in four places around the hoop, and every other mesh must be attached all the way around the hoop using No. 24 twine or larger. The hoop must be laced with 3/8-inch polypropylene or polyethylene rope for chaffing.]~~

~~*[(III)* 24-inch hoop. A single hoop must be constructed of either No. 60 twine 80 inches in length or 3/8-inch steel cable 75-1/2 inches in length. If twine is used, the twine must be laced in and out of the extension webbing 39 meshes behind the leading edge, and the ends must be tied together. If cable is used, the cable must be joined at its ends by a 3-inch piece of 3/8-inch aluminum pipe and pressed together with a 1/4-inch die to form a hoop. The inside diameter of this hoop must be between 23 and 25 inches. The hoop must be attached to the extension webbing 39 meshes behind the leading edge. The extension webbing must be quartered and attached in four places around the hoop, and every other mesh must be attached all the way around the hoop using No. 24 twine or larger. The hoop must be laced with 3/8-inch polypropylene or polyethylene rope for chaffing.]~~

~~*[(IV)* Funnel. The funnel must be constructed from four sections of 1-1/2-inch heat-set and depth-stretched polypropylene or polyethylene webbing. The two side sections must be rectangular in shape, 29-1/2 meshes on the leading edge by 23 meshes deep. The top and bottom sections are 29-1/2 meshes on the leading edge by 23 meshes deep and tapered 1 point 2 bars on both sides down to 8 meshes across the back. The four sections must be sewn together down the 23-mesh edge to form the funnel.]~~

~~*[(V)* Attachment of the funnel in the webbing extension. The funnel must be installed two meshes behind the leading edge of the extension starting at the center seam of the extension and the center mesh of the funnel's top section leading edge. On the same row of meshes, the funnel must be sewn evenly all the way around the inside of the extension. The funnel's top and bottom back edges must be attached one mesh behind the 28-inch cable hoop (front hoop). Starting at the top center seam, the back edge of the top funnel section must be attached four meshes each side of the center. Counting around 60 meshes from the top center, the back edge of the bottom section must be attached 4 meshes on each side of the bottom center. Clearance between the side of the funnel and the 28-inch cable hoop (front hoop) must be at least 6 inches when measured in the hanging position.]~~

~~*[(VI)* Cutting the escape openings. The leading edge of the escape opening must be located within 18 inches of the posterior edge of the turtle excluder device (TED) grid. The area of the~~

escape opening must total at least 864 square inches. Two escape openings 10 meshes wide by 13 meshes deep must be cut 6 meshes apart in the extension webbing, starting at the top center extension seam, 3 meshes back from the leading edge and 16 meshes to the left and to the right (total of four openings). The four escape openings must be double selvaged for strength.]

[(VII) Alternative Method for Constructing the Funnel and Escape Openings. The following method for constructing the funnel and escape openings may be used instead of the method described in subclauses (IV) -(VI) of this clause. With this alternative method, the funnel and escape openings are formed by cutting a flap in each side of the extension webbing; pushing the flaps inward; and attaching the top and bottom edges along the bars of the extension webbing to form the v-shape of the funnel. Minimum requirements applicable to this method include:]

[(-a-) The funnel's top and bottom back edges must be attached one mesh behind the 28-inch cable hoop (front hoop);]

[(-b-) clearance between the side of the funnel and the 28-inch cable hoop (front hoop) must be at least 6 inches when measured in the hanging position;]

[(-c-) the leading edge of the escape opening must be located within 18 inches (45.7 cm) of the posterior edge of the turtle excluder device (TED) grid; and,]

[(-d-) the area of the escape opening must total at least 864 square inches. To construct the funnel and escape openings using this method, begin 3-1/2 meshes from the leading edge of the extension, at the top center seam, count over 18 meshes on each side, and cut 13 meshes toward the back of the extension. Turn parallel to the leading edge, and cut 26 meshes toward the bottom center of the extension. Next, turn parallel to the top center seam, and cut 13 meshes forward toward the leading edge, creating a flap of webbing 13 meshes by 26 meshes by 13 meshes. Lengthen the flap to 18 meshes by adding a 4-1/2-mesh by 26-mesh rectangular section of webbing to the 26-mesh edge. Attach the 18-mesh edges to the top and bottom of the extension by sewing 2 bars of the extension to 1 mesh on the flap in toward the top center and bottom center of the extension, forming the exit opening and the funnel. Connect the two flaps together in the center with a 7-inch piece of No. 42 twine to allow adequate clearance for fish escapement between the flaps and the side openings. On each side, sew a 6-mesh by 10-1/2-mesh section of webbing to 6 meshes of the center of the 26-mesh cut on the extension and 6 meshes centered between the 13-mesh cuts 3-1/2 meshes from the leading edge. This forms two 10-mesh by 13-mesh openings on each side]

[(VIII) Cone fish deflector. The cone fish deflector is constructed of 2 pieces of polypropylene or polyethylene webbing with a mesh size of 8-1/4 inches over 5 stretched meshes measuring 40 meshes wide by 20 meshes in length and cut on the bar on each side forming a triangle. Starting at the apex of the two triangles, the two pieces must be sewn together to form a cone of webbing. The apex of the cone fish deflector must be positioned within 10-14 inches of the posterior edge of the funnel.]

[(IX) 11-inch cable hoop for cone deflector. A single hoop must be constructed of 5/16-inch or 3/8-inch cable 34-1/2 inches in length. The ends must be joined by a 3-inch piece of 3/8-inch aluminum pipe pressed together with a 1/4-inch die. The hoop must be inserted in the webbing cone, attached 10 meshes from the apex and laced all the way around with heavy twine.]

[(X) Installation of the cone in the extension. The cone must be installed in the extension 12 inches behind the back edge of the funnel and attached in four places. The midpoint of a piece of No. 60 twine 4 feet in length must be attached to the apex of the cone. This piece of twine must be attached to the 28-inch cable hoop at the center of each of its sides; the points of attachment for the two pieces of twine must be measured 20 inches from the midpoint attachment. Two 8-inch pieces of No. 60 twine must be attached to the top and bottom of the 11-inch cone hoop. The opposite ends of these two pieces of twine must be attached to the top and bottom center of the 24-inch cable hoop; the points of attachment for the two pieces of twine must be measured 4 inches from the points where they are tied to the 11-inch cone hoop.]

[(iii) Extended Funnel (standard size) must contain all of the following:]

[(I) Extension Material. The small-mesh sections used on both sides of the large-mesh escape section are constructed of No. 30 nylon webbing with a mesh size of 8-1/4 inches over 5 stretched meshes. The front section is 120 meshes around by 6-1/2 meshes deep. The back section is 120 meshes around by 23 meshes deep.]

[(II) Large-Mesh Escape Section. The large-mesh escape section is constructed of webbing with a mesh size of 40-50 inches over 5 stretched meshes. This section is cut on the bar to form a section that is 15 inches in length by 95 inches in circumference. The leading edge is attached to the 6-1/2-mesh extension section and the rear edge is attached to the 23-mesh extension section.]

[(III) Funnel. The funnel is constructed of No. 30 depth-stretched and heat-set polyethylene webbing with a mesh size of 7-1/2 inches over 5 stretched meshes. The circumference of the leading edge is 120 meshes and the back edge is 78 meshes. The short side of the funnel is 34 to 36 inches long and the opposite side of the funnel extends an additional 22 to 24 inches. The circumference of the leading edge of the funnel is attached to the forward small-mesh section three meshes forward of the large-mesh escape section and is evenly sewn, mesh for mesh, to the small-mesh section. The after edge of the funnel is attached to the after small-mesh section at its top and bottom eight meshes back from the large-mesh escape panel. Seven meshes of the top and seven meshes of the bottom of the funnel are attached to eight meshes at the top and bottom of the small-mesh section, such eight meshes being located immediately adjacent to the top and bottom centers of the small-mesh section on the side of the funnel's extended side. The extended side of the funnel is sewn at its top and bottom to the top and bottom of the small-mesh section, extending at an angle toward the top and bottom centers of the small-mesh section.]

[(IV) Semi-Rigid Hoop. A 30-inch diameter hoop constructed of plastic-coated trawl cable, swaged together with a 3/8-inch micropress sleeve, is installed five meshes behind the trailing edge of the large-mesh escape section. The extension webbing must be laced to the ring around the entire circumference and must be equally distributed on the hoop, that is, 30 meshes must be evenly attached to each quadrant.]

[(V) Installation. The extended funnel BRD is attached 8 inches (20.3 cm) behind the posterior edge of the TED. If it is attached behind a soft TED, a second semi-rigid hoop, as prescribed in subclause (IV) of this clause, must be installed in the front section of the BRD extension webbing at the leading edge of the funnel. The cod end of the trawl net is attached to the trailing edge of the BRD.]

[(iv) Extended Funnel (Inshore Size) must contain all of the following:]

[(I) Extension Material. The small-mesh sections used on both sides of the large-mesh escape section are constructed of No. 18 nylon webbing with a mesh size of 6-7/8 inches over 5 stretched meshes. The front section is 120 meshes around by

6-1/2 meshes deep. The back section is 120 meshes around by 23 meshes deep.]

[(II) Large-Mesh Escape Section. The large-mesh escape section is constructed of webbing with a mesh size of 40-50 inches over 5 stretched meshes. This section is cut on the bar to form a section that is 15 inches by 75 inches in circumference. The leading edge is attached to the 6-1/2-mesh extension section and the rear edge is attached to the 23-mesh extension section.]

[(III) Funnel. The funnel is constructed of with a mesh size of 6-7/8 inches over 5 stretched meshes, No. 18 depth-stretched and heat-set polyethylene webbing. The circumference of the leading edge is 120 meshes and the back edge is 78 meshes. The short side of the funnel is 30 to 32 inches long and the opposite side of the funnel extends an additional 20 to 22 inches. The circumference of the leading edge of the funnel is attached to the forward small-mesh section three meshes forward of the large-mesh escape section and is evenly sewn, mesh for mesh, to the small-mesh section. The after edge of the funnel is attached to the after small-mesh section at its top and bottom eight meshes back from the large-mesh escape panel. Seven meshes of the top and seven meshes of the bottom of the funnel are attached to eight meshes at the top and bottom of the small-mesh section, such eight meshes being located immediately adjacent to the top and bottom centers of the small-mesh section on the side of the funnel's extended side. The extended side of the funnel is sewn at its top and bottom to the top and bottom of the small-mesh section, extending at an angle toward the top and bottom centers of the small-mesh section.]

[(IV) Semi-Rigid Hoop. A 24-inch diameter hoop constructed of plastic-coated trawl cable, swaged together with a 3/8-inch micropress sleeve, is installed five meshes behind the trailing edge of the large mesh section. The extension webbing must be laced to the ring around the entire circumference and must be equally distributed on the hoop, that is, 30 meshes must be evenly attached to each quadrant.]

[(V) Installation. The extended funnel BRD is attached 8 inches behind the posterior edge of the TED. If it is attached behind a soft TED, a second semi-rigid hoop, as prescribed in subclause (IV) of this clause, must be installed in the front section of the BRD extension webbing at the leading edge of the funnel. The cod end of the trawl net is attached to the trailing edge of the BRD.]

[(v) Expanded Mesh. The expanded mesh BRD is constructed and installed exactly the same as the standard size extended funnel BRD, except that one side of the funnel is not extended to form a lead panel.]

(f) Turtle Excluder Device (TED) requirements.

(1) - (3) (No change.)

[(4) Approved TEDs.]

[(A) Hard TEDs. Hard TEDs are TEDs with rigid deflector grids and are categorized as "hooped hard TEDs," such as the NMFS and Cameron TEDs, or "single-grid hard TEDs," such as the Matagorda and Georgia TEDs. Hard TEDs complying with the following generic design criteria are approved TEDs:]

[(i) Construction materials. A hard TED must be constructed of one or a combination of the following materials, with minimum dimensions as follows:]

[(I) Solid steel rod with a minimum outside diameter of 1/4 inch;]

[(II) Fiberglass or aluminum rod with a minimum outside diameter of 1/2 inch; or]

[(III) Steel or aluminum tubing with a minimum outside diameter of 1/2 inch and a minimum wall thickness of 1/8 inch (also known as schedule 40 tubing).]

[(ii) Method of attachment. A hard TED must be sewn into the trawl around the entire circumference of the TED with heavy twine.]

[(iii) Angle of deflector bars.]

[(I) The angle of the deflector bars must be between 30 degrees and 55 degrees from the normal, horizontal flow through the interior of the trawl, except:]

[(II) In a hard TED with the position of the escape opening at the bottom of the trawl when the trawl is in its deployed position, the angle of the deflector bars from the normal, horizontal flow through the interior of the trawl, at any point, must not exceed 55 degrees, and:]

[(-a-) If the deflector bars that run from top to bottom are attached to the bottom frame of the TED, the angle of the bottom-most 4 inches of each deflector bar, measured along the bars, must not exceed 45 degrees;]

[(-b-) If the deflector bars that run from top to bottom are not attached to the bottom frame of the TED, the angle of the imaginary lines connecting the bottom frame of the TED to the bottom end of each deflector bar which runs from top to bottom must not exceed 45 degrees.]

[(iv) Space between bars. The space between deflector bars and between the deflector bars and the frame must not exceed 4 inches.]

[(v) Direction of bars. The deflector bars must run from top to bottom of the TED, as the TED is positioned in the trawl, except that up to four of the bottom bars and two of the top bars, including the frame, may run from side to side of the TED.]

[(vi) Position of escape opening. The entire width of the escape opening from the trawl must be centered on and immediately forward of the frame at either the top or bottom of the trawl when the trawl is in its deployed position. The escape opening must be at the top of the trawl when the slope of the deflector bars from forward to aft is upward, and must be at the bottom when such slope is downward. For a single-grid TED, the escape opening must be cut horizontally along the same plane as the TED, and may not be cut in a fore-and-aft direction.]

[(vii) Size of escape opening.]

[(I) Hooped hard TED. The escape opening must not be smaller than 25 inches by 25 inches. A door frame may not be used over the escape opening.]

[(II) Single-grid hard TED--The cut in the trawl webbing for the escape opening cannot be narrower than the outside width of the grid minus 4 inches on both sides of the grid, when measured as a straight line width. The resulting escape opening in the trawl webbing must measure at least 32 inches in horizontal taut length and, simultaneously, 10 inches in vertical taut height. The vertical measurement must be taken at the midpoint of the horizontal measurement.]

[(viii) Size of hoop or grid.]

[(I) Hooped hard TED.]

[(-a-) An oval front hoop on a hard TED must have an inside horizontal measurement of at least 32 inches and an inside vertical measurement of at least 20 inches.]

[(-b-) A circular front hoop on a hard TED must have an inside diameter of at least 32 inches.]

[(II) Single-grid hard TED. A single-grid hard TED must have an inside horizontal and vertical measurement of at least 28 inches. The required inside measurements must be at the mid-point of the deflector grid.]

[(ix) Flotation. Flotation is required on all hard TEDs with bottom escape openings.]

[(I) Installation and construction requirements:]

[(-a-) floats must be attached to the top one-half of the TED;]

[(-b-) floats may be attached either outside or inside the trawl;]

[(-c-) floats must be attached with heavy twine or rope;]

[(-d-) floats must be constructed of aluminum, hard plastic, expanded polyvinyl chloride, or expanded vinyl acetate unless otherwise specified.]

[(II) Flotation compliance options. The requirements of this clause may be satisfied if any of the criteria below are met.]

[(-a-) Dimension requirements:]

[(-1-) For hard TEDs with a circumference of 120 inches or more, a minimum of either one round, aluminum or hard plastic float, no smaller than 9.8 inches in diameter, or two expanded polyvinyl chloride or expanded ethylene vinyl acetate floats, each no smaller than 6.75 inches in diameter by 8.75 inches in length, must be attached.]

[(-2-) For hard TEDs with a circumference of less than 120 inches, a minimum of either one round, aluminum or hard plastic float, no smaller than 9.8 inches in diameter, or one expanded polyvinyl chloride or expanded ethylene vinyl acetate float, no smaller than 6.75 inches in diameter by 8.75 inches in length, must be attached.]

[(-b-) Float buoyancy requirements. Floats of any size and in any combination must be attached such that the combined buoyancy of the floats, as marked on the floats, equals or exceeds the weight of the hard TED, as marked on the TED. The buoyancy of the floats and the weight of the TED must be clearly marked on the floats and the TED as follows:]

[(-1-) Float buoyancy markings. Markings on floats must be made in clearly legible raised or recessed lettering by the original manufacturer. The marking must identify the buoyancy of the float in water, expressed in grams or kilograms, and must include the metric unit of measure. The marking may additionally include the buoyancy in English units. The marking must identify the nominal buoyancy for the manufactured float.]

[(-2-) TED weight markings. The marking must be made by the original TED manufacturer and must be permanent and clearly legible. The marking must identify the in-air, dry weight of the TED, expressed in grams or kilograms, and must include the metric unit of measure. The marking may additionally include the weight in English units. The marked weight must represent the actual weight of the individual TED as manufactured. Previously manufactured TEDs may be marked upon return to the original manufacturer. Where a TED is comprised of multiple detachable components, the weight of each component must be separately marked.]

[(-c-) Buoyancy-dimension requirements. Floats of any size and in any combination, provided that they are marked pursuant to clause (ix)(II)(-a-) of this subparagraph, must be attached such that the combined buoyancy of the floats equals or exceeds the following values:]

[(-1-) For floats constructed of aluminum or hard plastic, regardless of the size of the TED grid, the combined buoyancy must equal or exceed 14 lb. (6.4 kg);]

[(-2-) For floats constructed of expanded polyvinyl chloride or expanded ethylene vinyl acetate, where the circumference of the TED is 120 inches or more, the combined buoyancy must equal or exceed 20 lb. (9.1 kg); or]

[(-3-) For floats constructed of expanded polyvinyl chloride or expanded ethylene vinyl acetate, where the circumference of the TED is less than 120 inches, the combined buoyancy must equal or exceed 10 lb. (4.5 kg).]

[(B) Jones TED. The Jones TED must be constructed of at least 1-1/4 inch outside diameter aluminum or steel pipe, and the pipe must have a wall thickness of at least 1/8 inch. It must be generally oval in shape with a flattened bottom. The deflector bars must be attached to the frame at a 45-degree angle from the horizontal positioning downward and each bar must be attached at only one end to the frame. The deflector bars must be attached and lie in the same plane as the frame. The space between the ends of the bottom deflector bars and the bottom frame bar must be no more than 3 inches. The spacing between the bottom three deflector bars on each side must be no greater than 2-1/2 inches. The spacing between all other deflector bars must not exceed 3-1/2 inches and spacing between ends of opposing deflector bars also must not exceed 3-1/2 inches. This TED must comply with subparagraphs (A)(ii), (iii), (vi), (vii)(II), (viii)(II), and (ix) of this paragraph with respect to the method of attachment, the angle of the deflector bars, the position of the escape opening, the size of the escape opening, the size of the grid, and flotation.]

[(C) Soft TEDs. Soft TEDs are TEDs with deflector panels made from polypropylene or polyethylene netting. The Parker TED is the only approved TED. The Parker TED is a soft TED, consisting of a single triangular panel, composed of webbing of two different mesh sizes, that forms a complete barrier inside a trawl and that angles toward an escape opening in the top of the trawl.]

[(i) Excluder Panel. The excluder panel of the Parker TED must be constructed of a single triangular piece of webbing with a mesh size of 40 inches over 5 stretched meshes and two trapezoidal pieces of webbing with a mesh size of 20 inches over 5 stretched meshes. The webbing must consist of No. 48 (3-mm thick) or larger polypropylene or polyethylene webbing that is heat-set knotted or braided. The leading edge of the triangular panel must be 36 meshes wide and be tapered on each side with all-bar cuts to converge on an apex, such that the length of each side is 36 bars. The leading edges of the trapezoidal panel must be 8 meshes wide and must be cut with all-bar cuts running parallel to each other, such that the length of the inner edge is 72 bars and the length of the outer edge is 89 bars and the resulting fore-and-aft edge is 8 meshes deep. The two trapezoidal panels must be sewn to the triangular panel to create a single triangular excluder panel. The 72-bar edge of each trapezoidal panel must be securely joined with twine to one of the 36-bar edges of the triangular panel, tied with knots at each knot of the trapezoidal webbing and at least two wraps of twine around each bar of trapezoidal and the adjoining bar of the 8-inch (20.3-cm) mesh. The adjoining fore-and-aft edges of the two trapezoidal panels must be sewn together evenly.]

[(ii) Limitations on which trawls may have a Parker TED installed. The Parker TED must not be installed or used in a two-seam trawl with a tongue, nor in a triple-wing trawl (a trawl with a tongue along the headrope and a second tongue along the footrope). The Parker TED may be installed and used in any other trawl if the taper of the body panels of the trawl does not exceed 4 bars, 1 point and if it

can be properly installed in compliance with subparagraph (C)(iii) of this paragraph.]

[(iii) Panel installation:]

[(I) Leading edge attachment. The leading edge of the excluder panel must be attached to the inside of the bottom of the trawl across a straight row of meshes. For a two-seam trawl or a four-seam, tapered-wing trawl, the row of meshes for attachment to the trawl must run the entire width of the bottom body panel, from seam to seam. For a four-seam, straight-wing trawl, the row of meshes for attachment to the trawl must run the entire width of the bottom body panel and half the height of each wing panel of the trawl. Every mesh of the leading edge of the excluder panel must be evenly sewn to this row of meshes; meshes may not be laced to the trawl.]

[(II) Apex attachment. The apex of the triangular excluder panel must be attached to the inside of the top body panel of the trawl at the centerline of the trawl.]

[(III) Side attachment. The sides of the excluder panel must be attached evenly to the inside of the trawl from the outside attachment points of the excluder panel's leading edge to the apex of the excluder panel. Each side must be sewn with the same sewing sequence, and, if the sides of the excluder panel cross rows of bars in the trawl, the crossings must be distributed evenly over the length of the side attachment.]

[(iv) Escape opening for the Parker soft TED must be a longitudinal cut and meet the following specifications. A slit at least 56 inches in taut length must be cut along the centerline of the top body panel of the trawl immediately forward of the apex of the panel webbing. The slit must not be covered or closed in any manner. The edges and end points of the slit must not be reinforced in any way; for example, by attaching additional rope or webbing or by changing the orientation of the webbing.]

[(D) Allowable modifications to hard TEDs and special hard TEDs. Unless otherwise prohibited in subparagraph (B) of this paragraph, only the following modifications may be made to an approved hard TED or an approved special hard TED:]

[(i) Floats. In addition to floats required pursuant to subparagraph (A)(ix) of this paragraph, floats may be attached to the top one-half of the TED, either outside or inside the trawl, but not to a flap. Floats attached inside the trawl must be behind the rear surface at the top of the TED.]

[(ii) Accelerator funnel. An accelerator funnel may be installed in the trawl, if it is made of net webbing material with a stretched mesh size not greater 8-1/4 inches over a series of 5 stretched meshes if it has an inside horizontal opening of at least 39 inches when measured in a taut position, if it is inserted in the trawl immediately forward of the TED, and if its rear edge does not extend past the bars of the TED. The trailing edge of the accelerator funnel may be attached to the TED on the side opposite the escape opening if not more than 1/3 of the circumference of the funnel is attached, and if the inside horizontal opening of at least 39 inches is maintained. In a bottom-opening TED, only the top 1/3 of the circumference of the funnel may be attached to the TED. In a top-opening TED, only the bottom 1/3 of the circumference of the funnel may be attached to the TED.]

[(iii) Webbing flap. A webbing flap may be used to cover the escape opening under the following conditions: No device holds it closed or otherwise restricts the opening; it is constructed of webbing with a stretched mesh size not greater 8-1/4 inches over a series of 5 stretched meshes; it lies on the outside of the trawl; it is attached along its entire forward edge forward of the escape opening; it is not attached on the sides beyond the row of meshes that lies 6 inches behind the posterior edge of the grid; and it does not extend more than 24 inches beyond the posterior edge of the grid, except for boats fishing with a hard TED with the position of the escape opening at the bottom of the trawl when the trawl is in its deployed position, in which case the webbing flap must not extend beyond the posterior edge of the grid.]

[(iv) Chafing webbing. A single piece of nylon webbing, with a twine size no smaller than size 36 (2.46 mm in diameter), may be attached outside of the escape opening webbing flap to prevent chafing on bottom opening TEDs. This webbing may be attached along its leading edge only. This webbing may not extend beyond the trailing edge or sides of the existing escape opening webbing flap, and it must not interfere or otherwise restrict the turtle escape opening.]

[(v) Roller gear. Roller gear may be attached to the bottom of a TED to prevent chafing on the bottom of the TED and the trawl net. When a webbing flap is used in conjunction with roller gear, the webbing flap must be of a length such that no part of the webbing flap can touch or come in contact with any part of the roller gear assembly or the means of attachment of the roller gear assembly to the TED, when the trawl net is in its normal, horizontal position. Roller gear must be constructed according to one of the following design criteria:]

[(I) A single roller consisting of hard plastic shall be mounted on an axle rod, so that the roller can roll freely about the axle. The maximum diameter of the roller shall be 6 inches, and the maximum width of the axle rod shall be 12 inches. The axle rod must be attached to the TED by two support rods. The maximum clearance between the roller and the TED shall not exceed 1 inch at the center of the roller. The support rods and axle rod must be made from solid steel or solid aluminum rod no larger than 1/2 inch in diameter. The attachment of the support rods to the TED shall be such that there are no protrusions (lips, sharp edges, burrs, etc.) on the front face of the grid. The axle rod and support rods must lie entirely behind the plane of the face of the TED grid.]

[(II) A single roller consisting of hard plastic tubing shall be tightly tied to the back face of the TED grid with rope or heavy twine passed through the center of the roller tubing. The roller shall lie flush against the TED. The maximum outside diameter of the roller shall be 3-1/2 inches, the minimum outside diameter of the roller shall be 2 inches, and the maximum length of the roller shall be 12 inches. The roller must lie entirely behind the plane of the face of the grid.]

(g) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
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For further information, please call: (512) 389-4775

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SUBCHAPTER C. STATEWIDE CRAB FISHERY PROCLAMATION

31 TAC §§58.203, 58.205, 58.206, 58.208, 58.209

The amendments are proposed under the authority of Parks and Wildlife Code (PWC), Chapter 61, which provides the commission with authority to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life and the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life; Chapter 66, which requires reporting the sale of aquatic product within the state; Chapter 77, which provides the commission with authority to regulate the catching, possession, purchase, and sale of shrimp; and Chapter 78, which requires the commission to adopt any rules necessary for the administration of the program.

The proposed amendments affect Parks and Wildlife Code, Chapters 61, 66, 77, and 78.

§58.203. Licensing.

(a) (No change.)

(b) A person may operate a boat bearing a commercial crab fisherman's display license plate, ONLY if that person possesses on board the boat the following documentation:

(1) - (2) (No change.)

(c) (No change.)

§58.205. Display of License.

(a) (No change.)

(b) No more than one set of commercial crab fisherman's display license plates may be on board a commercial crab fishing boat at any one time.

§58.206. Issuance and Renewal of Commercial Crab Fisherman's License.

(a) The [~~Beginning September 1, 1998, the department will issue a commercial crab fisherman's license only to a person who documents to the satisfaction of the department that the person concurrently held each of the following licenses and tags during the period September 1, 1995, through November 13, 1996:~~]

[~~(1) General commercial fisherman's license;~~]

[~~(2) Commercial fishing boat license; and~~]

[~~(3) One or more commercial crab trap tags.~~]

[~~(b) After August 31, 1999, the~~] department may renew a commercial crab fisherman's license only if the person seeking to renew the license held the license to be renewed at the end of [~~during~~] the previous license year.

(b) [~~(c)~~] Individuals not meeting the requirements set forth in subsection [~~subsections~~] (a) [~~and (b)~~] of this section may appeal by application to the Crab License Management Review Board as provided in Parks and Wildlife Code, §78.103.

(c) [~~(d)~~] When evaluating a license application or license renewal application, the department may also consider department records pertaining to the applicant's history in the crab fishery.

§58.208. Limit on Number of Licenses Held; Designated License Holder.

(a) (No change.)

(b) A commercial crab fisherman's license may only be issued to an individual. A business or partnership [~~person, other than an individual who wishes to retain or seeks to renew a license~~] must designate an individual to whom the license will be issued.

§58.209. License Suspension and Revocation.

(a) The executive director, after notice and the opportunity for a hearing, may suspend a commercial crab fisherman's license if the license holder and all other operators of the vessel operated for the purposes of commercial crab fishing, in the aggregate, are convicted of two or more flagrant offenses. The suspension shall be for:

(1) six months, if:

(A) the date of each offense is within any 12-consecutive-month period [~~after August 31, 1998~~]; and

(B) (No change.)

(2) (No change.)

(b) - (c) (No change.)

(d) For purposes of this section, a flagrant offense includes:

(1) - (3) (No change.)

(4) fishing for crabs without obtaining the appropriate license[~~, if required, as~~] prescribed in this subchapter [~~section~~]; or

(5) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
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For further information, please call: (512) 389-4775

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SUBCHAPTER D. FINFISH FISHERY PROCLAMATION

31 TAC §58.302

The amendments are proposed under the authority of Parks and Wildlife Code (PWC), Chapter 61, which provides the commission with authority to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life and the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life; Chapter 66, which requires reporting the sale of aquatic product within the state; Chapter 77, which provides the commission with authority to regulate the catching, possession, purchase, and sale of shrimp; and Chapter 78, which requires the commission to adopt any rules necessary for the administration of the program.

The proposed amendments affect Parks and Wildlife Code, Chapters 61, 66, 77, and 78.

§58.302. Display of License.

(a) A boat operated for the purposes of commercial finfish fishing is required to have a commercial finfish fisherman's display license [~~plate~~] issued under this subchapter prominently displayed as to be clearly visible from both sides of the boat.

(b) No more than one set of commercial finfish fisherman's display license [~~plates~~] may be on board a commercial finfish fishing boat at any one time.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Gene McCarty
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Texas Parks and Wildlife Department
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TITLE 34. PUBLIC FINANCE

PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS

CHAPTER 25. MEMBERSHIP CREDIT

SUBCHAPTER B. COMPENSATION

34 TAC §25.30, §25.31

The Board of Trustees ("Board") of the Teacher Retirement System of Texas ("TRS") proposes a revised version of new §25.30 regarding conversion of noncreditable compensation and proposes new §25.31 regarding limits on compensation increases. TRS has withdrawn the version of new §25.30 adopted on an emergency basis and authorized for public comment publication on July 8, 2005. The withdrawn version of the emergency and proposed rule was published in the August 12, 2005, issue of the *Texas Register* (30 TexReg 4532, 4605). The revised version of proposed new §25.30 is not being re-adopted as an emergency rule. The Board is not simultaneously adopting proposed new §25.31 on an emergency basis and has not previously adopted another version of the proposed section as an emergency rule or authorized public comment publication of it before now.

Proposed new §25.30 implements the requirement under Senate Bill 1691, 79th Legislature, Regular Session ("SB 1691"), that the Board adopt rules excluding compensation in the member's final years of employment that represents amounts converted from noncreditable compensation to creditable salary and wages used to compute a retirement annuity. The proposed section applies to the three years prior to retirement and establishes a base year of the fourth year or the fifth year if there is no compensation in the fourth year. The characterization of the compensation in the base year is used to determine whether conversion occurred. The revised version of proposed new §25.30 clarifies that ineligible compensation converted to eligible compensation is excluded if it is received in any of the last three school years prior to retirement. As with the prior version of proposed new §25.30, this version indicates when conversion occurs and points out that the compensation must be for services that are performed in the future. Payment for unused accrued leave, including compensatory leave for overtime, is expressly excluded as eligible for conversion. The revised version of proposed new §25.30 also changes the "look-back" period to include only compensation converted after the 2005-2006 school year. This version of the proposed rule will allow members to convert ineligible compensation during the current school year and avoid exclusion under the rule, provided the member begins to receive the eligible compensation during the current school year. Proposed new §25.30 relies on the certification of the reporting entity to notify TRS if conversion has occurred. The revised version clarifies that the member can provide supporting documentation if compensation is excluded but provides that TRS makes the final decision and that member contributions on excluded amounts are refunded by TRS.

Proposed new §25.31 implements the requirement under SB 1691 that the Board adopt rules limiting the amount of increases in annual compensation subject to credit and deposit during a member's final years of employment. The proposed new rule caps the increase in compensation during the last three years before retirement at the greater of 110% of the previous year's compensation or the previous year's compensation plus $10,000. The proposed rule specifies that increases in compensation because of a change in employers, a change in duties, the performance of additional duties or work, legislation, or federal or state law will not be excluded. Proposed new §25.31 also provides that only compensation earned after the 2005-2006 school or contract year will be subject to the limit on increases and only salaries earned in the 2005-2006 school/contract year and thereafter will be used to calculate the base salary amount. The proposed rule provides for the refund of member contributions on ineligible compensation. The exceptions provided in proposed new §25.31 address the most common reasons employers give to justify increases in salary.

Tony C. Galaviz, TRS Chief Financial Officer, has determined that, for each year of the first five years the proposed new sections will be in effect, enforcing or administering the rule will not have foreseeable implications relating to cost or revenues of the state or a local government.

For each year of the first five years that the proposed new rules will be in effect, Mr. Galaviz has determined that the public benefit will be to provide notice, clarification, and guidance to employers and members of the requirements and procedures relating to the exclusion of converted compensation and limits on compensation increases during the last years of employment. Further, he states that the proposed rules will benefit the public by enhancing the long-term solvency of the retirement fund by encouraging members to remain employed longer to receive any commensurate increase in their retirement annuity because of compensation increases during the last years of employment. For each year of the first five years the proposed new sections will be in effect, persons who are required to comply with them may experience an economic cost because the proposed rules could affect the computation of their retirement benefits. Any such costs, however, are difficult to project because they are largely dependent upon the amounts and types of compensation received. In any case, the benefits accruing from implementation of the proposed section are expected to outweigh any such costs. Mr. Galaviz has also determined that, for each year of the first five years the proposed section is in effect, there will be no effect on a local economy, and therefore no local employment impact statement is required under §2001.022, Government Code. Moreover, there will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this section.

Comments may be submitted in writing to Ronnie Jung, Executive Director, 1000 Red River, Austin, Texas 78701. To be considered, written comments must be received by TRS no later than October 21, 2005.

Statutory Authority for Proposed New §25.30 and §25.31: §22 of SB 1691, which amends §825.110, Government Code, to require the Board to adopt rules (1) to exclude from annual compensation all or part of salary and wages in the final years of a member's employment that reasonably can be presumed to have been derived from a conversion of fringe benefits, maintenance, or other payments not includable in annual compensation to salary and wages and (2) to limit the amount of increases in annual compensation that may be subject to credit and deposit during a member's final years of employment; and §825.102, Government Code, which authorizes the Board to adopt rules for the administration of the funds of the retirement system.

Cross-reference to Statute: §22 of SB 1691, which amends §825.110, Government Code, to require the Board to adopt rules.

§25.30. Conversion of Noncreditable Compensation to Salary.

(a) TRS excludes from creditable compensation any amount of otherwise eligible compensation that represents amounts converted into salary and wages from noncreditable compensation to be received in any of the last three school years prior to retirement. Amounts excluded under this section are excluded in the year of conversion and each subsequent year until retirement.

(b) For purposes of this section, conversion occurs when an employer agrees to pay a member with creditable compensation for services performed in the future that in the past were paid by that employer with noncreditable compensation. Compensation in the form of accrued paid leave or accrued compensatory time for overtime worked cannot be converted to eligible compensation and are expressly excluded from creditable compensation at any time.

(c) The employer certifies whether compensation was converted in the last three school years prior to retirement.

(d) Only compensation converted after the 2005-2006 school or contract year will be excluded under this section.

(e) TRS will adjust a member's annual compensation at the time of retirement to comply with the requirements of subsection (a) of this section and refund the member contributions on excluded amounts. The refund will be made after the date on which TRS makes the first annuity payment.

(f) If compensation is excluded under subsection (a) of this section, the member may provide additional information in the form of written documentation to demonstrate that the compensation should not be excluded. TRS makes the final determination regarding the characterization of compensation as creditable or noncreditable.

(g) Upon the request of TRS, the employer shall provide documents or records evidencing characterization of the compensation.

§25.31. Percentage Limits on Compensation Increases.

(a) The amount of compensation credited by TRS in each of the last three school years prior to retirement may not exceed the amount of compensation allowed for the preceding school year by more than 10% or $10,000, whichever is greater.

(b) The base line amount used to determine the amount of allowable compensation in the third school year prior to retirement is the greater of either the amount of compensation for the fourth school year prior to retirement or the amount of compensation for the fifth school year prior to retirement. If there is no compensation for either the fourth or fifth school year prior to retirement, the base amount is the earliest salary credited in the three school years prior to retirement. If the member does not have credited compensation in at least three school years during the last five school years prior to retirement, the limit in subsection (a) of this section does not apply.

(c) The amount of allowable compensation in the third year prior to retirement is the greater of 110% of the base line amount or the amount of compensation in the base year plus $10,000. The amount of allowable compensation for each subsequent year is the greater of 110% of the allowable amount for the previous year or the allowable amount for the previous year plus $10,000.

(d) Increases in compensation due to a change in employers, a change in duties, additional duties or work, legislation, or federal or state law are not subject to the limits in subsection (a) of this section and the allowable amount of compensation for the remaining years prior to retirement is calculated using the increased amount.

(e) Only compensation earned after the 2005-2006 school or contract year will be subject to the limit on increases described in this section. Salaries earned during the 2005-2006 school year and after will be used in the calculation of the base amount.

(f) TRS will adjust a member's annual compensation at the time of retirement to comply with the limit on creditable compensation in subsection (a) of this section and refund the member contributions on the amount that exceeds the limits described in this section. The refund will be made after the date on which TRS makes the first annuity payment.

(g) No adjustment in compensation will be made if the limit on compensation increases would not affect the calculation of the member's retirement benefit.

(h) If compensation is adjusted under this section, the member may provide additional information in the form of written documentation to demonstrate that the compensation should be allowed. TRS makes the final determination regarding whether compensation is allowed in the member's benefit calculation.

(i) Upon the request of TRS, the employer shall provide documents or records evidencing the basis for the increased compensation.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TRD-200504112
Ronnie G. Jung
Executive Director
Teacher Retirement System of Texas
Earliest possible date of adoption: October 30, 2005
For further information, please call: (512) 542-6438

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CHAPTER 29. BENEFITS
SUBCHAPTER A. RETIREMENT

34 TAC §29.11

The Board of Trustees ("Board") of the Teacher Retirement System of Texas ("TRS") proposes amendments to §29.11, concerning changes to the actuarial tables for early age service retirement.

The proposed amendments to §29.11 add a new actuarial table for early age retirement for members who are affected by the repeal of §824.202(c), Government Code, and amendment of §824.202(b), Government Code, as enacted by Senate Bill 1691, 79th Legislature, Regular Session (2005) ("SB 1691"). Due to the repeal of certain actuarial factors for members who are not grandfathered under the provisions of SB 1691 and who do not meet the eligibility requirements for an unreduced service retirement annuity at time of retirement, a new actuarial table is needed to establish the reduction factors applicable to these members. The proposed amendments establish a new table using age in years and months, corresponding to the statutory table setting forth age in whole years only.

Tony C. Galaviz, TRS Chief Financial Officer, estimates that, for each year of the first five years the proposed rule will be in effect, there will be no foreseeable implications relating to cost or revenues of the state or local governments as a result of enforcing or administering the proposed rule. Rather, any measurable impact on the cost or revenues of the state or local governments is the result of the legislative enactment.

For each year of the first five years that the proposed rule will be in effect, Mr. Galaviz has determined that the public benefit will be to provide notice, clarification, and guidance to TRS members regarding the applicable early age reduction factors. Any probable economic costs to persons required to comply with the proposed rule, including local employers, is the result of the legislative enactment. There will be no effect on a local economy because of the proposals, and therefore no local employment impact statement is required under §2001.022, Government Code. Any measurable impact on a local economy or local employment is the result of the legislative enactment. Moreover, there will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing the proposed new section.

Comments may be submitted in writing to Ronnie Jung, Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. To be considered, written comments must be received by TRS no later than October 21, 2005.

Statutory Authority: §825.102, Government Code, which authorizes the Board to adopt rules for the administration of the funds of the retirement system.

Cross-reference to Statute: §11 of SB 1691, which amends §824.202(b), Government Code, to provide early age reduction factors for members not grandfathered under the provisions of SB 1691.

§29.11. Actuarial Tables.

Actuarial tables furnished by the TRS actuary of record (actuary) will be used for computation of benefits. Factors for ages or types of annuities not included in the tables will be computed from the same data by the same general formulas. The Teacher Retirement System adopts by reference the actuary's June 1997 factors for retirement options and the early age reduction factors based on 8.0% interest, with modifications to the early age reduction factor table to reflect repeal of Tex. Gov't Code §824.202(c) effective September 1, 2005. These actuarial tables shall be effective beginning September 1, 1997, except for the early age reduction factor modifications, which shall be effective for retirements after September 1, 2005. The Teacher Retirement System also adopts by reference the actuary's June 1997 factors for disabled member retirement options based on 8.0% interest. These actuarial tables shall be effective beginning September 1, 1997. The board of trustees may change the tables or adopt new tables from time to time by amending this section; provided, however, that any such change does not result in any retiree or member eligible for service retirement with an unreduced annuity as of the date of the change receiving a smaller benefit than the benefit computed immediately before the change. Information regarding and/or copies of these tables may be obtained by contacting Teacher Retirement System of Texas, 1000 Red River Street, Austin, Texas 78701-2698, (512) 542-6400.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Ronnie G. Jung
Executive Director
Teacher Retirement System of Texas
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For further information, please call: (512) 542-6438

SUBCHAPTER E. DEFERRED RETIREMENT OPTION PLAN

34 TAC §29.63

The Board of Trustees ("Board") of the Teacher Retirement System of Texas ("TRS") proposes amendments to §29.63 concerning the Deferred Retirement Option Plan ("DROP") and the deadline to purchase special service credit as a DROP participant.

The proposed amendments to §29.63 address the new statutory window for participants in DROP to revoke their DROP participation no later than December 30, 2005, and clarify the effect of DROP revocation on the eligibility to purchase special service credit. The amendments implement provisions of Senate Bill 1691, 79th Legislature, Regular Session (2005) ("SB 1691"), amending §824.805, Government Code, relating to the window to revoke DROP participation.

Tony C. Galaviz, TRS Chief Financial Officer, estimates that, for each year of the first five years the proposed rule will be in effect, there will be no foreseeable implications relating to cost or revenues of the state or local governments as a result of enforcing or administering the proposed rule. Rather, any measurable impact on the cost or revenues of the state or local governments is the result of the legislative enactment.

For each year of the first five years that the proposed rule will be in effect, Mr. Galaviz has determined that the public benefit will be to provide notice, clarification, and guidance to TRS members regarding the effect of DROP revocation on the opportunity to purchase special service credit. Any probable economic costs to local employers required to comply with the proposed rule is the result of the legislative enactment. There will be no effect on a local economy because of the proposed amendments, and therefore no local employment impact statement is required under §2001.022, Government Code. Any measurable impact on a local economy or local employment is the result of the legislative enactment. Moreover, there will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing the proposed new section.

Comments may be submitted in writing to Ronnie Jung, Executive Director, 1000 Red River Street, Austin, Texas 78701-2698.

To be considered, written comments must be received by TRS no later than October 21, 2005.

Statutory Authority: §825.102, Government Code, which authorizes the Board to adopt rules for the administration of the funds of the retirement system.

Cross-reference to Statute: §19 of SB 1691, which amends §824.805, Government Code, to provide a window for DROP participants to revoke their DROP participation.

§29.63. Deadline for Purchase of Special Service Credit.

(a) Pursuant to Government Code §824.803(c), a member who elects to participate in the Deferred Retirement Option Plan (DROP) but also desires to purchase special service credit must purchase all special service credit eligible for purchase on or before the effective date of the member's DROP participation. Special service credit that a member would otherwise become eligible to purchase during DROP participation may not be purchased after the effective date of DROP participation. Also, an election to participate in DROP disqualifies any state personal or sick leave accumulated at the time of the effective date of the member's DROP participation as well as such leave accumulated during participation in DROP from being used in calculating the number of days or hours required to purchase state personal or sick leave at the time of actual retirement.

(b) A member participating in DROP on September 1, 2001, was permitted to elect, before December 31, 2001, to discontinue participation in DROP on a form prescribed by and filed with TRS. Additionally, a member participating in DROP on September 1, 2005, or whose period of participation in the plan expired on or before September 1, 2005, but who has not retired on or before that date may, before December 31, 2005, elect to discontinue participation in DROP on a form prescribed by and filed with TRS. If a member discontinued participation in DROP pursuant to Government Code §824.805(b), this rule shall not be deemed to bar the member from purchasing special service credit for which the requirements have been earned or met before or during the member's participation in DROP.

(c) Further, a member who completes the period of participation in DROP and who returns to employment with a TRS-covered employer without having retired may purchase prior to retirement any special service credit for which the member is eligible and for which the requirements have been earned or met entirely after the member's participation in DROP.

(d) The purchase of special service credit before or after participation in DROP shall comply with [~~may not violate~~] applicable plan qualification requirements, including the limits on annual contributions for purchase of [~~permissive~~] service credit authorized under [~~purchase restrictions set forth in~~] Government Code §823.006.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 16, 2005.

TRD-200504114
Ronnie G. Jung
Executive Director
Teacher Retirement System of Texas
Earliest possible date of adoption: October 30, 2005
For further information, please call: (512) 542-6438

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CHAPTER 31. EMPLOYMENT AFTER RETIREMENT

SUBCHAPTER A. GENERAL PROVISIONS

34 TAC §31.1

The Teacher Retirement System of Texas (TRS) proposes amendments to §31.1 concerning definitions related to employment after retirement ("return to work"). Specifically, the emergency amendments change the definition of "Substitute" found in subsection (b) of §31.1. The proposal has been adopted on an emergency basis and is published in this issue of the *Texas Register*.

The TRS Board of Trustees ("Board") proposes the amended rule to implement Senate Bill 1691, 79th Legislature, Regular Session (2005) ("SB 1691"), which became effective September 1, 2005. Subject to certain conditions and exceptions, SB 1691 requires employers who report to TRS the employment of a retiree to pay a pension or health benefit surcharge. For the health benefit surcharge to apply, the reported retiree must also be enrolled in the retirees health benefits program ("TRS-Care"). The proposal to amend the definition of a substitute in §31.1 relates to the implementation of the surcharges under SB 1691. Employers do not have to pay the pension or health benefit surcharge on a retiree serving as a substitute. In addition, the proposed change in the definition will be used to determine eligible service under the related return to work exception that allows a retiree to serve as a substitute without forfeiting an annuity. The proposed amendment will provide employers greater clarity regarding reported retirees serving as substitutes.

Tony C. Galaviz, TRS Chief Financial Officer, estimates that for each year of the first five years the proposed rule will be in effect, there will be no foreseeable implications relating to cost or revenues of the state or local governments as a result of enforcing or administering the rule.

Mr. Galaviz also states that the public benefit will be to provide employers greater clarity regarding retirees serving as substitutes. There will be no measurable economic cost to persons required to comply with the rule. Because there will be no measurable effect on a local economy or local employment because of the proposed rule, no local employment impact statement is required under §2001.022, Government Code. Moreover, there will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing the proposed new section.

Comments may be submitted in writing to Ronnie Jung, Executive Director, 1000 Red River Street, Austin, Texas 78701. To be considered, written comments must be received by TRS no later than October 21, 2005.

Statutory Authority: §825.102, Government Code, which authorizes the Board to adopt rules for the administration of the funds of the retirement system. Cross-reference to Statute: §824.602, Government Code, relating to exceptions to loss of benefits on resumption of service; §30 of SB 1691, which establishes new §825.4092, Government Code, relating to employer contributions for employed retirees; §42 of SB 1691, which amends §1575.204, Insurance Code, relating to public school contribution under the retirees health benefits program.

§31.1. Definitions.

(a) School year--For purposes of employment after retirement, a twelve-month period beginning on September 1 and ending on August 31 of the calendar year.

(b) Substitute--For purposes of employment after retirement, a person who serves on a temporary basis in the place of a current employee and the pay does not exceed the rate of pay for substitute work established by the employer[~~daily, on-call basis in a position normally filled by another regular employee~~]. Service as a substitute that does not meet this definition is not eligible substitute service for purposes of an exception to forfeiture of annuity payments under §31.13 of this title.

(c) Third party entity--For purposes of employment after retirement, an entity retained by a Texas public educational institution to provide personnel to the institution who perform duties or provide services that employees of that institution would otherwise perform or provide.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 16, 2005.

TRD-200504115
Ronnie G. Jung
Executive Director
Teacher Retirement System of Texas
Earliest possible date of adoption: October 30, 2005
For further information, please call: (512) 542-6438

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SUBCHAPTER D. EMPLOYMENT PENSION SURCHARGE

34 TAC §31.41

The Board of Trustees ("Board") of the Teacher Retirement System of Texas ("TRS") proposes a revised version of new §31.41 concerning the administration of an employer pension surcharge related to employment after retirement. TRS has withdrawn the version of the proposed rule approved July 8, 2005, and published in the August 12, 2005, issue of the *Texas Register* (30 TexReg 4610). The revised proposal has been adopted on an emergency basis and is published in this issue of the *Texas Register*.

In accordance with Senate Bill 1691, 79th Legislature, Regular Session ("SB 1691"), the proposed new section implements the requirement that employers shall make monthly payments to the pension trust fund for each TRS-retired employee reported to TRS on the return to work report of retirees, unless exempted by law. It provides guidance to employers regarding the reported retirees for whom the surcharge is owed under SB 1691 and sets out procedures related to payments. In accordance with the legislative enactment, the Board separately adopted by resolution the pension surcharge amount, which is an amount equal to the sum of the combined member and state contributions (currently 12.4% of salary).

The revised proposal applies the surcharge only to reported retirees working in TRS-covered positions. Along with other clarifying changes, the revised proposal expressly provides that the criteria used to determine if a retiree is working in a TRS-covered position for purposes of the surcharge are the same as those used to determine eligibility for TRS membership.

Tony C. Galaviz, TRS Chief Financial Officer, estimates that for each year of the first five years the proposed rule will be in effect, there will be no foreseeable implications relating to cost or revenues of the state or local governments as a result of enforcing or administering the rule. Rather, any measurable impact on the cost or revenues of the state or local governments is the result of the legislative enactment. The Legislative Budget Board (LBB) has determined that, under SB 1691, the cost to public school employers will be an average of about $5,100 annually per reported retiree for whom the surcharge is owed, based on the rate of 12.4% and an average teacher salary of about $41,000 per year. Under SB 1691, there would be no direct increase in general revenue to the state resulting from the employer pension surcharge. Any increased revenue to the TRS pension trust fund is difficult to project because it depends upon the number of retirees who will be reported for purposes of the surcharge and the amounts of salary that will be paid to them, as well as other factors.

Mr. Galaviz also states that the public benefit will be to provide notice, clarification, and guidance to employers of the requirements and procedures relating to the pension surcharge. Further, he states that the public will benefit by having employers contribute to the long-term solvency of the retirement system when they hire retirees in lieu of new members. Any probable economic costs to persons required to comply with the rule is the result of the enactment of SB 1691. The LBB has estimated that the probable economic costs to public school employers required to comply with SB 1691 and pay the pension surcharge will be an average of about $5,100 annually per reported retiree for whom the surcharge is owed. There will be no measurable impact on a local economy or local employment because of the rule proposal, and therefore no local employment impact statement is required under §2001.022, Government Code. Any measurable impact on a local economy or local employment is the result of legislative enactment. Moreover, there will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing the proposed new section.

Comments may be submitted in writing to Ronnie Jung, Executive Director, 1000 Red River Street, Austin, Texas 78701. To be considered, written comments must be received by TRS no later than October 21, 2005.

Statutory Authority: §825.102, Government Code, which authorizes the Board to adopt rules for the administration of the funds of the retirement system. Cross-reference to Statute: §30 of SB 1691, which establishes new §825.4092, Government Code, relating to employer contributions for employed retirees.

§31.41. Return To Work Employer Pension Surcharge.

(a) For each report month a retiree is working in a TRS-covered position and reported on the Employment of Retired Members Report, the employer that reports the retiree shall pay to the Teacher Retirement System of Texas (TRS) a surcharge based on the retiree's salary. For purposes of this section, the employer is the reporting entity that reports the employment of the retiree and the criteria used to determine if the retiree is working in a TRS-covered position are the same as the criteria for determining employment eligible for TRS membership.

(b) The surcharge amount that must be paid by the employer for each retiree working in a TRS-covered position is an amount that

is derived by applying a percentage to the retiree's salary. The percentage applied to the retiree's salary is an amount set by the Board of Trustees and is based on member contribution rate and the state pension contribution rate.

(c) The surcharge is due from each employer that reports a retiree as working as described in this section on or after September 1, 2005, beginning with the report month for September 2005.

(d) The surcharge is not owed by the employer for any retiree reported by that employer on the Employment of Retired Members Report for the report month of January 2005.

(e) The surcharge is not owed by the employer for a retiree that is reported as working under the exception for Substitute Service as provided in §31.13 of the title unless that retiree combines Substitute Service under §31.13 of this title with other TRS-covered employment in the same calendar month. For each calendar month that the retiree combines substitute service and other TRS-covered employment, the surcharge is owed by the employer that reports the retiree on all compensation earned by the retiree, including compensation for the substitute service.

(f) The surcharge is owed by the employer on any retiree who is working for a third party entity but serving in a TRS-covered position and who is considered an employee of that employer under §824.601(d) of the Government Code.

(g) If a retiree is employed concurrently in more than one position that is not eligible for TRS membership, the surcharge is owed if the combined employment is eligible for membership under §25.6 of this title. If the employment is with more than one employer, the surcharge is owed by each employer.

(h) If a retiree is employed concurrently in more than one position and one of the positions is eligible for TRS membership and one is not, the surcharge is owed on the combined employment. If the employment is with more than one employer, the surcharge is owed by each employer.

(i) If a retiree is employed in a position eligible for TRS membership, the surcharge is owed by each employer on all subsequent employment with a TRS-covered employer for the same school year.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TRD-200504116
Ronnie G. Jung
Executive Director
Teacher Retirement System of Texas
Earliest possible date of adoption: October 30, 2005
For further information, please call: (512) 542-6438

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CHAPTER 41. HEALTH CARE AND INSURANCE PROGRAMS
SUBCHAPTER A. RETIREE HEALTH CARE BENEFITS (TRS-CARE)

34 TAC §41.4

The Board of Trustees ("Board") of the Teacher Retirement System of Texas ("TRS") proposes a revised version of new §41.4 concerning the administration of an employer health benefit surcharge related to employment after retirement. TRS has withdrawn the version of the proposed rule approved July 8, 2005, and published in the August 12, 2005, issue of the *Texas Register* (30 TexReg 4611). The revised proposal has been adopted on an emergency basis and is published in this issue of the *Texas Register*.

In accordance with Senate Bill 1691, 79th Legislature, Regular Session ("SB 1691"), the proposed new section implements the requirement that employers shall make monthly payments to the fund for the health benefits program ("TRS-Care") provided pursuant to the Texas Public School Retired Employees Group Benefits Act under Chapter 1575, Insurance Code, for each TRS-retired employee who is both (i) reported to TRS on the return to work report of retirees, taking into consideration any exceptions allowed by law, and (ii) enrolled in TRS-Care. The proposed new rule provides guidance to employers regarding the reported retirees for whom the surcharge is owed and procedures related to payments.

Pursuant to the legislative enactment, the Board separately adopted by resolution the monthly dollar amounts for the surcharge, as shown in the table entitled "TRS-Care Employer Surcharge Amounts- Return to Work Effective September 1, 2005," which is incorporated into this preamble and may be viewed by accessing TRS's Web site at www.trs.state.tx.us/Reporting_Officials/surcharge_amts.pdf or by requesting a copy from Ronnie Jung, TRS Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. As provided by SB 1691 and clarified by the proposed rule, the health benefit surcharge owed is an amount that is equal to the difference, if any, between (i) the amount that is required to be paid in premiums for the participation of the retiree and any other individuals enrolled in TRS-Care under the same account identification number and (ii) the full cost of the participation of the retiree and any other individuals enrolled in TRS-Care under the same account identification number.

The revised proposal applies the surcharge only to reported retirees working in TRS-covered positions. Along with other clarifying changes, the revised proposal expressly provides that the criteria used to determine if a retiree is working in a TRS-covered position for purposes of the surcharge are the same as those used to determine eligibility for TRS membership.

Tony C. Galaviz, TRS Chief Financial Officer, estimates that for each year of the first five years the proposed rule will be in effect, there will be no foreseeable implications relating to cost or revenues of the state or local governments as a result of enforcing or administering the rule. Rather, any measurable impact on the cost or revenues of the state or local governments is the result of the legislative enactment. The ranges for the monthly dollar surcharge amounts are based on the calculation required by SB 1691 and derived using objective data. The cost to public school employers will vary according to the plan tier chosen by the reported retiree for whom the health benefit surcharge is owed, the number of individuals enrolled under the same account identification number, the years of service credit of the retiree, and the participants' Medicare eligibility. Under SB 1691, there would be no direct increase in general revenue to the state resulting from the health benefit surcharge. Any increased revenue to the TRS-Care fund is difficult to project because it depends upon the

number of retirees who will be reported for purposes of the surcharge and the amounts owed for them based on the calculation described above, as well as other factors.

Mr. Galaviz has also determined that the public benefit will be to provide notice, clarification, and guidance to employers of the requirements and procedures relating to the health benefit surcharge. Further, he states that the public will benefit by having employers contribute to the long-term solvency of the TRS-Care fund. Any probable economic cost to persons required to comply with the rule is the result of the enactment of SB 1691. The monthly surcharge costs to public school employers range from $23 to $688, depending on the plan chosen by the reported retiree for whom the health benefit surcharge is owed, the number of individuals enrolled under the same account identification number, the years of service credit of the retiree, and the participants' Medicare eligibility. There will be no measurable impact on a local economy or local employment because of the rule proposal, and therefore no local employment impact statement is required under §2001.022, Government Code. Any measurable impact on a local economy or local employment is the result of legislative enactment. Moreover, there will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing the proposed new section.

Comments may be submitted in writing to Ronnie Jung, Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. To be considered, written comments must be received by TRS no later than October 21, 2005.

Statutory Authority: §1575.052, Insurance Code, which authorizes the Board to adopt rules it considers necessary to implement and administer the retirees' group health benefit plan and associated fund. Cross-reference to Statute: §30 of SB 1691, which establishes new §825.4092, Government Code, relating to employer contributions for employed retirees; §42 of SB 1691, which amends §1575.204, Insurance Code, relating to public school contribution under the retirees health benefits program.

§41.4 Employer Health Benefit Surcharge.

(a) When used in this section, the term "employer" has the meaning given in §821.001(7), Government Code.

(b) A retiree who is enrolled in the health benefits program ("TRS-Care") provided pursuant to the Texas Public School Retired Employees Group Benefits Act, is working in a TRS-covered position, and is reported on the Employment of Retired Members Report to the Teacher Retirement System of Texas ("TRS") shall submit the TRS-Care Employer Health Benefit Surcharge Information Form, promulgated by TRS, to the employer, providing details of the retiree's TRS-Care coverage tier, years of service credit, and category of enrollment, as well as the identification of all employers of the retiree and all employers of any other retiree enrolled under the same account identification number, as required by the form. The criteria used to determine if the retiree is working in a TRS-covered position are the same as the criteria for determining employment eligible for TRS membership.

(c) The retiree must submit to the employer an updated Employer Health Benefit Surcharge form when changes occur in coverage or the employment status of any retiree or other individual enrolled under the same account identification number.

(d) For each report month a retiree is enrolled in TRS-Care, is working in a TRS-covered position, and is reported on the Employment of Retired Members Report, the employer that reports the retire shall, using the information provided by the retiree to the employer on the Employer Health Benefit Surcharge form, pay monthly to the Retired School Employees Group Insurance Fund (the "Fund") a surcharge amount that is derived by taking the difference, if any, between:

(1) the monthly full cost, as set by the trustee, for all individuals (including a spouse and children, if any) enrolled under the same account identification number; and

(2) the monthly total premium, as set by the trustee, for all individuals (including a spouse and children, if any) enrolled under the same account identification number.

(e) The surcharge is also owed by the employer on any retiree who is enrolled in TRS-Care, is working for a third party entity but is serving in a TRS-covered position, and who is considered an employee of that employer under §824.601(d) of the Government Code.

(f) The surcharge under subsection (d) of this section is due from each employer that reports a retiree as working in a TRS-covered position on or after September 1, 2005, beginning with the report month for September 2005.

(g) The surcharge under subsection (d) of this section is not owed:

(1) by an employer for any retiree reported by that employer on the Employment of Retired Members Report for the report month of January 2005;

(2) by an employer for any retiree reported by a second employer on the Employment of Retired Members Report for the report month of January 2005, if both employers are school districts that consolidate into a consolidated school district on or before September 1, 2005; or

(3) by an employer for a retiree reported as working under the exception for Substitute Service as provided in §31.13 of this title unless that retiree combines Substitute Service under §31.13 of this title with other TRS-covered employment in the same calendar month. For each calendar month that the retiree combines substitute service and other TRS-covered employment, the surcharge is owed by the employer that reports the retiree on all compensation earned by the retiree, including compensation for the substitute service.

(h) An employer who reports to TRS the employment of a retiree who is enrolled in TRS-Care and is working in a TRS-covered position shall inform TRS as soon as possible in writing of the name, address, and telephone number of any other employer that employs the retiree or any other retiree who is also enrolled under the same account identification number.

(i) If more than one employer reports the employment of a retiree who is enrolled in TRS-Care to TRS during any part of a month, the surcharge under subsection (d) of this section required to be paid into the Fund by each reporting employer for that month is the total amount of the surcharge due that month divided by the number of reporting employers. The pro rata share owed by each employer is not based on the number of hours respectively worked each week by the retiree for each employer, nor is it based on the number of days respectively worked during the month by the retiree for each employer.

(j) If a retiree who is enrolled in TRS-Care is employed concurrently in more than one position that is not eligible for TRS membership, the surcharge is owed if the combined employment is eligible for membership under §25.6 of this title. If the employment is with more than one employer, the surcharge will be paid according to subsection (i) of this section by each employer.

(k) If a retiree who is enrolled in TRS-Care is employed concurrently in more than one position and one of the positions is eligible for TRS membership and one is not, the surcharge is owed on the

combined employment. If the employment is with more than one employer, the surcharge will be paid according to subsection (i) of this section by each employer.

(l) If a retiree who is enrolled in TRS-Care is employed in a position eligible for TRS membership, the surcharge will be paid according to subsection (i) of this section by each employer on all subsequent employment with a TRS-covered employer for the same school year.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 16, 2005.

TRD-200504117
Ronnie G. Jung
Executive Director
Teacher Retirement System of Texas
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For further information, please call: (512) 542-6438

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 4. COMMERCIAL VEHICLE REGULATIONS AND ENFORCEMENT PROCEDURES

SUBCHAPTER B. REGULATIONS GOVERNING TRANSPORTATION SAFETY

37 TAC §4.21

The Texas Department of Public Safety proposes new §4.21 to Chapter 4, Subchapter B, concerning Regulations Governing Transportation Safety.

New §4.21 implements the requirements of Senate Bill 217, 79th Texas Legislature, Regular Session. Senate Bill 217 establishes reporting requirements for employers for valid positive test results from alcohol and drug tests conducted on holders of commercial driver's licenses.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications for state or local government, or local economies.

Mr. Ybarra also has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to ensure to the public greater compliance by motor carriers with all of the statutes and regulations pertaining to the safe operation of commercial vehicles in this state. There is no adverse economic impact anticipated for individuals, small businesses, or micro-businesses.

Comments on the proposal may be submitted to Mark Rogers, Major, Texas Highway Patrol Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0500, (512) 424-2116.

The new section is proposed pursuant to Texas Transportation Code, §644.051, which authorizes the director to adopt rules regulating the safe transportation of hazardous materials and the safe operation of commercial motor vehicles.

Texas Transportation Code, §644.051 is affected by this proposal.

§4.21. Reports of Valid Positive Results on Alcohol and Drug Tests.

(a) Reporting Requirement. An employer required under the federal safety regulations to conduct alcohol and controlled substance testing of employees shall report to the department a valid positive result on an alcohol or controlled substance test performed as part of the carrier's alcohol and drug testing program or consortium, as defined by Title 49, Code of Federal Regulations, Part 382, on an employee of the carrier who holds a commercial driver's license issued under Texas Transportation Code, Chapter 522.

(1) The report must be submitted by employers within 10 days of receiving notice of a valid positive result on an alcohol or drug test performed.

(2) The report must be submitted on a form prescribed by the department that is available at the following Internet web site address: http://www.txdps.state.tx.us/forms. All information requested on the form must be completed. The completed form must be mailed to MCCA Section Supervisor, Motor Carrier Bureau, Texas Department of Public Safety, 6200 Guadalupe, MSC# 0522, Austin, Texas 78752-4019, or sent by facsimile to (512) 424-5310. Unless the report is for a refusal to submit a sample, employers must also attach a legible copy of either the Federal Drug Testing, Custody and Control Form (with at least steps one through six completed), the U. S. Department of Transportation (DOT) Alcohol Testing Form (with at least steps one through three completed), or the Medical Review Officer's or Breath Alcohol Technician's report of a positive, diluted, adulterated, or substituted alcohol or drug test

(3) When a valid positive result is obtained on an owner-operator, that owner-operator is responsible for submission of the Report of Valid Positive Drug or Alcohol test to the department.

(4) A Medical Review Officer, Breath Alcohol Technician, laboratory, consortium, or other individuals may submit a Report of Valid Positive Drug or Alcohol Test to the department. Reports by laboratories or other individuals will only be entered in the department's database when verified by the Medical Review Officer or Breath Alcohol Technician.

(b) Release of Information. Information regarding Reports of Valid Positive Drug or Alcohol Tests is confidential and only subject to release as provided in Texas Transportation Code, §521.053. A request must be submitted on a form prescribed by the department that is available at the following Internet web site address: http://www.txdps.state.tx.us/forms. The request form must be mailed to MCCA Section Supervisor, Motor Carrier Bureau, Texas Department of Public Safety, 6200 Guadalupe, MSC# 0522, Austin, Texas 78752-4019, or sent by facsimile to (512) 424-5310.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 16, 2005.

TRD-200504107
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Earliest possible date of adoption: October 30, 2005
For further information, please call: (512) 424-2135

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WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 7. BANKING AND SECURITIES

PART 7. STATE SECURITIES BOARD

CHAPTER 116. INVESTMENT ADVISERS AND INVESTMENT ADVISER REPRESENTATIVES

7 TAC §116.16

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.38(d), the proposed new section, submitted by the State Securities Board has been automatically withdrawn. The new section as proposed appeared in the March 11, 2005, issue of the *Texas Register* (30 TexReg 1387).

Filed with the Office of the Secretary of State on September 15, 2005.

TRD-200504083

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 53. FINANCE

SUBCHAPTER E. DISPLAY OF BOAT REGISTRATION

31 TAC §53.91

The Texas Parks and Wildlife Department withdraws proposed new §53.91 which appeared in the July 22, 2005, issue of the *Texas Register* (30 TexReg 4189).

Filed with the Office of the Secretary of State on September 19, 2005.

TRD-200504134
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Effective date: September 19, 2005
For further information, please call: (512) 389-4775

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SUBCHAPTER G. MARINE DEALERS, DISTRIBUTORS, AND MANUFACTURERS

31 TAC §53.110

The Texas Parks and Wildlife Department withdraws the proposed amendment to §53.110 which appeared in the July 22, 2005, issue of the *Texas Register* (30 TexReg 4189).

Filed with the Office of the Secretary of State on September 19, 2005.

TRD-200504135
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Effective date: September 19, 2005
For further information, please call: (512) 389-4775

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TITLE 34. PUBLIC FINANCE

PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS

CHAPTER 25. MEMBERSHIP CREDIT

SUBCHAPTER B. COMPENSATION

34 TAC §25.30

The Teacher Retirement System of Texas has withdrawn the emergency new §25.30, which appeared in the August 12, 2005, issue of the *Texas Register* (30 TexReg 4532).

Filed with the Office of the Secretary of State on September 13, 2005.

TRD-200504040
Ronnie Jung
Executive Director
Teacher Retirement System of Texas
Effective date: September 13, 2005
For further information, please call: (512) 542-6438

♦ ♦ ♦

34 TAC §25.30

The Teacher Retirement System of Texas has withdrawn from consideration proposed new §25.30, which appeared in the August 12, 2005, issue of the *Texas Register* (30 TexReg 4605).

Filed with the Office of the Secretary of State on September 13, 2005.

TRD-200504046

Ronnie Jung
Executive Director
Teacher Retirement System of Texas
Effective date: September 13, 2005
For further information, please call: (512) 542-6438

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CHAPTER 31. EMPLOYMENT AFTER RETIREMENT
SUBCHAPTER D. EMPLOYER PENSION SURCHARGE

34 TAC §31.41

The Teacher Retirement System of Texas has withdrawn the emergency new §31.41, which appeared in the August 12, 2005, issue of the *Texas Register* (30 TexReg 4536).

Filed with the Office of the Secretary of State on September 13, 2005.

TRD-200504042
Ronnie Jung
Executive Director
Teacher Retirement System of Texas
Effective date: September 13, 2005
For further information, please call: (512) 542-6438

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34 TAC §31.41

The Teacher Retirement System of Texas has withdrawn from consideration proposed new §31.41, which appeared in the August 12, 2005, issue of the *Texas Register* (30 TexReg 4610).

Filed with the Office of the Secretary of State on September 16, 2005.

TRD-200504110
Ronnie Jung
Executive Director
Teacher Retirement System of Texas
Effective date: September 16, 2005
For further information, please call: (512) 542-6438

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CHAPTER 41. HEALTH CARE AND INSURANCE PROGRAMS
SUBCHAPTER A. RETIREE HEALTH CARE BENEFITS (TRS-CARE)

34 TAC §41.4

The Teacher Retirement System of Texas has withdrawn the emergency new §41.4, which appeared in the August 12, 2005, issue of the *Texas Register* (30 TexReg 4537).

Filed with the Office of the Secretary of State on September 13, 2005.

TRD-200504044
Ronnie Jung
Executive Director
Teacher Retirement System of Texas
Effective date: September 13, 2005
For further information, please call: (512) 542-6438

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34 TAC §41.4

The Teacher Retirement System of Texas (TRS) has withdrawn from consideration proposed new §41.4, which appeared in the August 12, 2005, issue of the *Texas Register* (30 TexReg 4611).

Filed with the Office of the Secretary of State on September 16, 2005.

TRD-200504111
Ronnie Jung
Executive Director
Teacher Retirement System of Texas
Effective date: September 16, 2005
For further information, please call: (512) 542-6438

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the the rule (Government Code, §2001.036). If a rule is adopted without change to the text as published in the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 358. MEDICAID ELIGIBILITY

The Texas Health and Human Services Commission (HHSC) adopts amendments to §358.105(5), which describes individuals who are eligible under Type Program 51 as well as the Program references in §§358.200(d), 358.210(a)(4), and 358.465(c) without changes to the proposed text as published in the July 29, 2005, issue of the *Texas Register* (30 TexReg 4290) and will not be republished.

In addition, the amendments delete or update obsolete references, such as changing "department" to "commission." HHSC adopts the amendments to the rules relating to Type Program 51 due to no funds having been appropriated to the program beyond the current biennium, and because those clients affected were assisted to employ an option available under federal law to retain Medicaid eligibility without interruption. Under Type Program 51, Medicaid eligible individuals whose income exceeds the HHSC's Title XIX institutional income limit since July 1, 1979, because of a cost-of-living increase in pension or retirement benefits, continue to be eligible for medical benefits. This is because the applicable cost-of-living increases are excluded from countable income. This program has been funded with 100% state funds under a Rider to legislative appropriations that the 79th Texas Legislature did not continue. Texas residents who require nursing home care and who have monthly income above the income cap but below the private pay cost of the care may have insufficient funds to pay for the needed care. To address this problem federally, Congress in 1993 amended section 1917 of the Social Security Act to provide for an income diversion trust, called a "Qualified Income Trust" or "QIT" (See 42 USC §1396p(d)(4)(B)). The proper use of a QIT allows a person to legally divert the person's income into a trust, after which the income is not counted for purposes of the Medicaid eligibility income cap. Those individuals affected by the amendments which repeal the Type Program 51 rules may retain eligibility for medical assistance without interruption by establishing a QIT, and HHSC has coordinated assistance for these clients towards helping to ensure that each affected client established a QIT before Type Program 51 ends.

Under Government Code, §2007.003(b), HHSC has determined that Chapter 2007 of the Government Code does not apply to these rules. The changes the amendments make do not implicate a recognized interest in private real property. Accordingly, HHSC is not required to complete a takings impact assessment.

HHSC received no written comments on the amendments. The HHSC Council voted to support the proposal at its July 22, 2005, meeting.

SUBCHAPTER A. GENERAL INFORMATION

1 TAC §358.105

The amendment is adopted under the Texas Government Code, §531.033, which provides the Commissioner of HHSC with broad rulemaking authority; the Human Resources Code, §32.021 and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 19, 2005.

TRD-200504155
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Effective date: October 9, 2005
Proposal publication date: July 29, 2005
For further information, please call: (512) 424-6900

♦ ♦ ♦

SUBCHAPTER B. MEDICARE AND THIRD-PARTY RESOURCES

1 TAC §358.200, §358.210

The amendments are adopted under the Texas Government Code, §531.033, which provides the Commissioner of HHSC with broad rulemaking authority; the Human Resources Code, §32.021 and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 19, 2005.

TRD-200504156
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Effective date: October 9, 2005
Proposal publication date: July 29, 2005
For further information, please call: (512) 424-6900

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SUBCHAPTER E. INCOME

1 TAC §358.465

The amendment is adopted under the Texas Government Code, §531.033, which provides the Commissioner of HHSC with broad rulemaking authority; the Human Resources Code, §32.021 and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 19, 2005.

TRD-200504157
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Effective date: October 9, 2005
Proposal publication date: July 29, 2005
For further information, please call: (512) 424-6900

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TITLE 16. ECONOMIC REGULATION

PART 8. TEXAS RACING COMMISSION

CHAPTER 321. PARI-MUTUEL WAGERING

SUBCHAPTER A. MUTUEL OPERATIONS

The Texas Racing Commission adopts amendments to §321.1, 321.3, 321.13, 321.21, 321.33, and 321.35, relating to mutuel operations at pari-mutuel racetracks. The amendments are adopted without changes to the proposed text published in the July 8, 2005, issue of the *Texas Register* (30 TexReg 3955) and the text will not be republished. The amendments are adopted in conjunction with the Commission's review of Chapter 321, conducted pursuant to Government Code §2001.039. The Commission has determined that the reason for adopting Chapter 321 continues to exist, with the adopted amendments.

The sections adopted for amendment relate to definitions, the conduct of wagering, the pari-mutuel track report, prohibited wagers, and claims for payment. The adoptions add a definition for ticketless electronic wagering, eliminate out-of-date language, clarify requirements regarding reports to the Commission, clarify the prohibition of accepting wagers via the internet, and conform the rules to current agency practice.

No comments were received regarding the adoption of these amendments.

DIVISION 1. GENERAL PROVISIONS

16 TAC §§321.1, 321.3, 321.13, 321.21

The amendments are adopted under the Texas Civil Statutes, Article 179e, §3.02, which authorizes the Commission to make rules relating exclusively to horse and greyhound racing; §6.06, which authorizes the Commission to adopt rules on all matters relating to the planning, construction, and operation of racetracks; §11.01, which authorizes the Commission to adopt rules to regulate pari-mutuel wagering on horse and greyhound races; and §11.04, which authorizes the Commission to adopt rules regarding the location of wagers and the use of telephones to wager.

The amendments implement Texas Civil Statutes, Article 179e.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 13, 2005.

TRD-200504049
Elizabeth Garza Goins
General Counsel
Texas Racing Commission
Effective date: October 3, 2005
Proposal publication date: July 8, 2005
For further information, please call: (512) 833-6699

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DIVISION 3. MUTUEL TICKETS AND VOUCHERS

16 TAC §321.33, §321.35

The amendments are adopted under the Texas Civil Statutes, Article 179e, §3.02, which authorizes the Commission to make rules relating exclusively to horse and greyhound racing; §6.06, which authorizes the Commission to adopt rules on all matters relating to the planning, construction, and operation of racetracks; §11.01, which authorizes the Commission to adopt rules to regulate pari-mutuel wagering on horse and greyhound races; and §11.04, which authorizes the Commission to adopt rules regarding the location of wagers and the use of telephones to wager.

The amendments implement Texas Civil Statutes, Article 179e.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 13, 2005.

TRD-200504050
Elizabeth Garza Goins
General Counsel
Texas Racing Commission
Effective date: October 3, 2005
Proposal publication date: July 8, 2005
For further information, please call: (512) 833-6699

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SUBCHAPTER B. TOTALISATOR REQUIREMENTS AND OPERATING ENVIRONMENT

The Texas Racing Commission adopts amendments to §§321.103, 321.105, 321.121, 321.123, 321.139, and 321.143, relating to totalisator requirements and operating environment at pari-mutuel racetracks. The amendments are adopted without changes to the proposed text published in the July 8, 2005, issue of the *Texas Register* (30 TexReg 3956) and the text will not be republished. The amendments are adopted in conjunction with the Commission's review of Chapter 321, conducted pursuant to Government Code §2001.039. The Commission has determined that the reason for adopting Chapter 321 continues to exist, with the adopted amendments.

The sections adopted for amendment relate to facility requirements, hardware requirements, general management requirements, personnel requirements, ad hoc reports, and logs. The adoptions clarify the Commission's requirements relating to off-site totalisator equipment, add restrictions relating to ticketless electronic wagering, add a requirement that tote companies submit a business contingency plan, correct a typographical error, clarify that the executive secretary may determine which tote company employees must obtain a Commission license, clarify the deadline for filing an incident report, and incorporate provisions relating to e-wagering accounts in ad hoc reports and tote logs.

No comments were received regarding the adoption of these amendments.

DIVISION 1. FACILITIES AND EQUIPMENT

16 TAC §321.103, §321.105

The amendments are adopted under the Texas Civil Statutes, Article 179e, §3.02, which authorizes the Commission to make rules relating exclusively to horse and greyhound racing; §6.06, which authorizes the Commission to adopt rules on all matters relating to the planning, construction, and operation of racetracks; §11.01, which authorizes the Commission to adopt rules to regulate pari-mutuel wagering on horse and greyhound races; and §11.04, which authorizes the Commission to adopt rules regarding the location of wagers and the use of telephones to wager.

The amendments implement Texas Civil Statutes, Article 179e.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 13, 2005.

TRD-200504051
Elizabeth Garza Goins
General Counsel
Texas Racing Commission
Effective date: October 3, 2005
Proposal publication date: July 8, 2005
For further information, please call: (512) 833-6699

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DIVISION 2. OPERATIONAL REQUIREMENTS

16 TAC §321.121, §321.123

The amendments are adopted under the Texas Civil Statutes, Article 179e, §3.02, which authorizes the Commission to make rules relating exclusively to horse and greyhound racing; §6.06, which authorizes the Commission to adopt rules on all matters relating to the planning, construction, and operation of racetracks; §11.01, which authorizes the Commission to adopt rules to regulate pari-mutuel wagering on horse and greyhound races; and §11.04, which authorizes the Commission to adopt rules regarding the location of wagers and the use of telephones to wager.

The amendments implement Texas Civil Statutes, Article 179e.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 13, 2005.

TRD-200504052
Elizabeth Garza Goins
General Counsel
Texas Racing Commission
Effective date: October 3, 2005
Proposal publication date: July 8, 2005
For further information, please call: (512) 833-6699

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DIVISION 3. REPORTING AND LOG REQUIREMENTS

16 TAC §321.139, §321.143

The amendments are adopted under the Texas Civil Statutes, Article 179e, §3.02, which authorizes the Commission to make rules relating exclusively to horse and greyhound racing; §6.06, which authorizes the Commission to adopt rules on all matters relating to the planning, construction, and operation of racetracks; §11.01, which authorizes the Commission to adopt rules to regulate pari-mutuel wagering on horse and greyhound races; and §11.04, which authorizes the Commission to adopt rules regarding the location of wagers and the use of telephones to wager.

The amendments implement Texas Civil Statutes, Article 179e.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 13, 2005.

TRD-200504053
Elizabeth Garza Goins
General Counsel
Texas Racing Commission
Effective date: October 3, 2005
Proposal publication date: July 8, 2005
For further information, please call: (512) 833-6699

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SUBCHAPTER C. REGULATION OF LIVE WAGERING

DIVISION 2. DISTRIBUTION OF PARI-MUTUEL POOLS

16 TAC §§321.312, 321.313, 321.315

The Texas Racing Commission adopts amendments to §§321.312, 321.313, and 321.315, relating to the regulation of wagering on races conducted live in Texas. The amendments are adopted without changes to the proposed text published in the July 8, 2005, issue of the *Texas Register* (30 TexReg 3959) and the text will not be republished. The amendments are adopted in conjunction with the Commission's review of Chapter 321, conducted pursuant to Government Code §2001.039. The Commission has determined that the reason for adopting Chapter 321 continues to exist, with the adopted amendments.

The sections adopted for amendment relate to the pick (n) pool, the select three, four, or five pool, and the tri-superfecta pool. The adopted amendments correct a typographical error, provide a protocol for determining which animals will be substituted for a scratched animal, and rearrange the order of subsections relating to the distribution of the tri-superfecta pool on a mandatory payout day.

No comments were received regarding the adoption of these amendments.

The amendments are adopted under the Texas Civil Statutes, Article 179e, §3.02, which authorizes the Commission to make rules relating exclusively to horse and greyhound racing; §6.06, which authorizes the Commission to adopt rules on all matters relating to the planning, construction, and operation of racetracks; §11.01, which authorizes the Commission to adopt rules to regulate pari-mutuel wagering on horse and greyhound races; and §11.04, which authorizes the Commission to adopt rules regarding the location of wagers and the use of telephones to wager.

The amendments implement Texas Civil Statutes, Article 179e.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 13, 2005.

TRD-200504054
Elizabeth Garza Goins
General Counsel
Texas Racing Commission
Effective date: October 3, 2005
Proposal publication date: July 8, 2005
For further information, please call: (512) 833-6699

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SUBCHAPTER E. TICKETLESS ELECTRONIC WAGERING

The Texas Racing Commission adopts new §§321.601, 321.603, 321.605, 321.607, 321.609, 321.621, 321.623, 321.625, and 321.627, relating to wagering on horse and greyhound races at Texas racetracks via an electronic wagering system. The new sections are adopted without changes to the proposed text published in the July 8, 2005, issue of the *Texas Register* (30 TexReg 3961) and the text will not be republished. The new sections are adopted in conjunction with the Commission's review of Chapter 321, conducted pursuant to Government Code §2001.039. The Commission has determined that the reason for adopting Chapter 321 continues to exist, with the adopted new sections.

The new sections provide procedures and restrictions on the conduct of ticketless electronic wagering at Texas racetracks. The new sections provide for an e-wagering plan to be submitted and approved by the agency, restrictions on e-wagering to ensure strict compliance with application wagering laws, the cancellation of e-wagers, and the suspension or termination of e-wagering.

No comments were received regarding the adoption of these new sections.

DIVISION 1. CONDUCT OF E-WAGERING

16 TAC §§321.601, 321.603, 321.605, 321.607, 321.609

The new sections are adopted under the Texas Civil Statutes, Article 179e, §3.02, which authorizes the Commission to make rules relating exclusively to horse and greyhound racing; §6.06, which authorizes the Commission to adopt rules on all matters relating to the planning, construction, and operation of racetracks; §11.01, which authorizes the Commission to adopt rules to regulate pari-mutuel wagering on horse and greyhound races; and §11.04, which authorizes the Commission to adopt rules regarding the location of wagers and the use of telephones to wager.

The new sections implement Texas Civil Statutes, Article 179e.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 13, 2005.

TRD-200504055
Elizabeth Garza Goins
General Counsel
Texas Racing Commission
Effective date: October 3, 2005
Proposal publication date: July 8, 2005
For further information, please call: (512) 833-6699

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DIVISION 2. OPERATIONAL REQUIREMENTS

16 TAC §§321.621, 321.623, 321.625, 321.627

The new sections are adopted under the Texas Civil Statutes, Article 179e, §3.02, which authorizes the Commission to make rules relating exclusively to horse and greyhound racing; §6.06, which authorizes the Commission to adopt rules on all matters relating to the planning, construction, and operation of racetracks; §11.01, which authorizes the Commission to adopt rules to regulate pari-mutuel wagering on horse and greyhound races; and §11.04, which authorizes the Commission to adopt rules regarding the location of wagers and the use of telephones to wager.

The new sections implement Texas Civil Statutes, Article 179e.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 13, 2005.

TRD-200504056
Elizabeth Garza Goins
General Counsel
Texas Racing Commission
Effective date: October 3, 2005
Proposal publication date: July 8, 2005
For further information, please call: (512) 833-6699

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 97. PLANNING AND ACCOUNTABILITY

SUBCHAPTER AA. ACCOUNTABILITY AND PERFORMANCE MONITORING

The Texas Education Agency (TEA) adopts amendment to §97.1001 and repeal of §97.1002 and §97.1007, concerning accountability. The amendment and repeals are adopted without changes to the proposed text as published in the August 12, 2005, issue of the *Texas Register* (30 TexReg 4600) and will not be republished. The adopted amendment to §97.1001 describes the state accountability rating system and adopts applicable excerpts of the *2005 Accountability Manual*, dated June 2005. The adopted repeal of §97.1002 repeals the adoption by reference of *Sections I-VI* and *VIII* of the *2004 Accountability Manual*, dated July 2004. The adopted repeal of §97.1007 repeals the adoption by reference of the *2002 Alternative Education Accountability Manual*, dated July 2001, and amended by an Addendum, dated March 28, 2002.

Legal counsel with the TEA has recommended that the procedures for issuing accountability ratings for public school districts and campuses be adopted as part of the *Texas Administrative Code*. This decision was made in 2000 given a court decision challenging state agency decision making via administrative letter/publications. Given the statewide application of the accountability rating process and the existence of sufficient statutory authority for the commissioner of education to formally adopt rules in this area, portions of each annual accountability manual have been adopted since 2000. The accountability system evolves from year to year so the criteria and standards for rating and acknowledging schools in the most current year differ to some degree over those applied in the prior year. The intention is to annually update 19 TAC §97.1001 to refer to the most recently published accountability manual.

The adopted amendment to 19 TAC §97.1001 describes the state accountability rating system and adopts excerpts of the *2005 Accountability Manual*, dated June 2005, into rule. The excerpts, *Chapters 2-6, 9, 11-13, 16*, and *17* of the *2005 Accountability Manual*, specify the indicators, standards, and procedures used by the commissioner of education to determine accountability ratings, both standard and alternative education accountability (AEA), for districts, campuses, and charter schools. These chapters also specify indicators, standards, and procedures used to determine Gold Performance Acknowledgment (GPA) on additional indicators for Texas public school districts and campuses. Also specified in *Chapters 2-6, 9, 11-13, 16*, and *17* of the *2005 Accountability Manual* are procedures for submitting an appeal. The TEA issued accountability ratings under the procedures specified in the *2005 Accountability Manual* in August 2005. Ratings may be revised as a result of investigative activities by the commissioner as authorized under TEC, §39.074 and §39.075. The title of §97.1001 also changes from "Annual Accountability Standards" to "Accountability Rating System."

In 2005, campuses and districts will be evaluated using four base indicators: Texas Assessment of Knowledge and Skills (TAKS) results, completion rates, annual dropout rates, and student performance on the State Developed Alternative Assessment (SDAA) II. In 2005, the GPA system will award acknowledgment on 13 separate indicators to districts and campuses rated *Academically Acceptable* or higher: Attendance Rate for Grades 1-12; Advanced Academic Course Completion; Advanced Placement/International Baccalaureate Examination Results; College Admissions Test Results; Commended Performance on Reading/English Language Arts (ELA), Mathematics, Writing, Science and/or Social Studies; TAAS/TASP Equivalency; Recommended High School Program Participation; and Comparable Improvement on Reading/ELA and Mathematics.

The adopted repeal of 19 TAC §97.1002 is due to combining language from the current 19 TAC §97.1002 into the amended 19 TAC §97.1001. Specifically, the language to adopt excerpts of the *2005 Accountability Manual* was moved to 19 TAC §97.1001; therefore, 19 TAC §97.1002 is no longer needed.

The adopted repeal of 19 TAC §97.1007 is necessary because the *2005 Accountability Manual* addresses both standard and AEA procedures. There is no longer a separate manual for AEA procedures. Chapters 9 and 11-13 of the 2005 manual address the indicators, standards, and procedures used to determine AEA ratings for campuses and districts evaluated under AEA procedures. Because these chapters are adopted into rule with the amended 19 TAC §97.1001, there is no need for 19 TAC §97.1007.

No comments were received regarding adoption of the amendment and repeals.

19 TAC §97.1001

The amendment is adopted under the Texas Education Code (TEC), §§39.051(c) - (d), 39.072(c), 39.0721, 39.073, and 29.081(e), which authorize the commissioner of education to specify the indicators, standards, and procedures used to determine standard accountability ratings and alternative education accountability ratings and to determine acknowledgment on additional indicators.

The amendment implements the Texas Education Code, §§39.051(c) - (d), 39.072(c), 39.0721, 39.073, and 29.081(e).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 13, 2005.

TRD-200504036
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Effective date: October 3, 2005
Proposal publication date: August 12, 2005
For further information, please call: (512) 475-1497

♦ ♦ ♦

19 TAC §97.1002, §97.1007

The repeals are adopted under the Texas Education Code (TEC), §§39.051(c) - (d), 39.072(c), 39.0721, 39.073, and 29.081(e), which authorize the commissioner of education to specify the indicators, standards, and procedures used to determine standard accountability ratings and alternative education accountability ratings and to determine acknowledgment on additional indicators.

The repeals implement the Texas Education Code, §§39.051(c) - (d), 39.072(c), 39.0721, 39.073, and 29.081(e).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 13, 2005.

TRD-200504037
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Effective date: October 3, 2005
Proposal publication date: August 12, 2005
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 10. TEXAS FUNERAL SERVICE COMMISSION

CHAPTER 206. GUARANTEED STUDENT LOANS

22 TAC §206.1

The Texas Funeral Service Commission (commission) adopts new §206.1, concerning Default and Repayment Agreements without changes to the text as published in the August 5, 2005, issue of the *Texas Register* (30 TexReg 4436) and will not be republished.

The new section describes instances when the commission will and will not issue new licenses or renew outstanding licenses when a licensee or applicant is in default on a guaranteed student loan or a repayment agreement.

The commission received no comments.

No other statutes, articles, or codes are affected by the new section.

The new section is adopted under the authority of the Texas Occupations Code §651.152 which authorizes the commission to issue such rules and regulations as may be necessary to administer Chapter 651. The chapter is also adopted under Education Code §57.491 which directs all agencies to adopt rules on this subject.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 16, 2005.

TRD-200504099
O.C. Robbins
Executive Director
Texas Funeral Service Commission
Effective date: October 6, 2005
Proposal publication date: August 5, 2005
For further information, please call: (512) 936-2466

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PART 25. TEXAS STRUCTURAL PEST CONTROL BOARD

CHAPTER 599. TREATMENT STANDARDS

22 TAC §599.1

The Texas Structural Pest Control Board adopts an amendment to §599.1 concerning Termite Control with changes to the proposed text as published in the July 8, 2005, issue of the *Texas Register* (30 TexReg 3964).

Justification for the rule is that with the adoption, the words "devices" or "methods" are added to the word "products" for consistency throughout the section. The preferred spelling for U.S. Environmental Protection Agency is used. Finally, the word "instructions" is added to provide clarification on the use of methods, devices or products that do not require labeling.

The rule will function by clarity as to what forms of termite control are permitted and also clarify what forms of termite control may be used.

Comments were received from Mr. Jay Dwyer of the Texas Association of Builders questioned the validity of the Board's statutory jurisdiction. He noted that the Board has not regulated construction practices. He suggested that the Board look at the proposed amendment submitted by his association. The Board does believe it can exercise authority in this area consistent with its enabling act. The Board also does not agree with the proposed amendment. The listing of criteria for new products/methods/devices will provide clearer criteria to all parties.

The amendment is adopted under the Structural Pest Control Act, Chapter 1951 of the Occupations Code, which provides the Texas Structural Pest Control Board with the authority to license and regulate the structural pest control industry.

§599.1. Termite Control.

It is illegal to use materials, products, methods or, devices for termite control that are not approved by the Board.

(1) Each pesticide product, method or device registered by the U.S. Environmental Protection Agency or the Texas Department

of Agriculture for termite control will be automatically approved by the Board as long as the product is applied or used according to the instructions on the label or labeling.

(2) Products, methods or devices not subject to U.S. Environmental Protection Agency or Texas Department of Agriculture registration may be approved by the Board if the manufacturer submits a request for approval to the Board. The request must contain the following information:

(A) the name and address of the applicant and the name and address of the person whose name shall appear on the product, method or device label, if not the applicant's;

(B) the name of the product, method or device;

(C) a complete copy of all labeling and instructions to accompany the product, method or device and a statement of all claims to be made for it, including the directions for use;

(D) the complete formula of the active ingredient be disclosed and the percentage of active ingredient and inerts be disclosed;

(E) a full description of the tests made and the results of the tests on which claims are based. These tests should be made by a recognized testing agency or institution and support, to the Board's satisfaction, the efficacy and safety of the product when used as directed; and

(F) all available toxicology information, including the antidote or effective treatment.

(3) The following criteria should be utilized when reviewing new products/methods/devices under paragraph (2) of this section.

(A) The Board staff shall review the request to determine if all of the required data listed in paragraph (2) of this section has been submitted.

(B) Establish a minimum of two Board agenda times for the review to approve/disapprove of new products, methods and devices.

(C) Efficacy data shall be part of the review and the data should support the efficacy claim. This must be in writing. There should be sufficient data to assure efficacy in Texas.

(D) A scientific advisory group could be used as needed for each new request and the group would forward the information to the Board staff for review. This would be a standing committee. More committee members could be added if additional expertise is needed for a particular review.

(E) A consumer disclosure document would be reviewed and approved by the Board.

(F) Testing should include a scientific method

(i) hypothesis;

(ii) comparisons between control and treatment;

(iii) replications; and

(iv) statistical analysis indicating level of efficacy.

(G) Products/methods/devices would receive specific approvals. For instance, if a product were approved for a full treatment, it does not mean it is also approved for a partial treatment.

(H) Although companies will make requests under this section, products/methods/devices would receive approvals, not companies. Patents and franchising are not a Board matter.

(I) The Board should make it clear to requesting parties and consumers that the Board can review an approved product again at future times as the need arises. The Board can also rescind approvals.

(J) There may be instances where Board members need to recuse themselves from voting on a particular product, method or device. For example, if a Board member was involved with the product/method/device research funding or is a shareholder with the product/method/device, the Board member would have to recuse themselves from making motions, voting or debating the matter with the Board. Guidance can be found in past Ethics Commission opinions or new Ethics Commission opinions can be requested.

(K) The Board shall determine if the product labeling or use directions are clear.

(L) The Board shall determine if adequate training is available for use of the product, device, or method.

(M) A risk assessment shall be made involving safety hazards and risks.

(N) The Board will review what experience other state regulators have reported, what other states have given approvals, and whether other states did any review at all. The requesting company shall provide this information. When the requesting party states that there is no information related to this segment, Board staff would make efforts of its own to determine if this kind of information exists.

(O) Is research available that indicates different results than that submitted by the requesting party? Is there adverse data resulting from claims or lawsuits? The requesting party should supply this data. When the requesting party states that there is none, Board staff would make efforts of its own to determine if this kind of information exists.

(P) If a product/method/device is approved for experimental testing before final Board approval/disapproval, staff do not have to be present at every testing, but will be present for some testing. However, the company shall provide the Board's Field Operations Division 24-hour notice before each experimental testing so that the Board staff would monitor the testing when it chooses to do so.

(Q) If the product/method/device is approved, the Board shall assign it to a licensing category. The termite category might be the most designated category but fumigation and other categories might also have some applicability.

(R) After the Board's review is finalized, Board staff will prepare a conclusion letter to the requesting party. The letter will precisely state the details of the approval or disapproval.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Murray Walton
Executive Director
Texas Structural Pest Control Board
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22 TAC §599.2

The Texas Structural Pest Control Board adopts an amendment to §599.2 concerning Subterranean Termite Post Construction Treatments with changes to the proposed text as published in the July 8, 2005, issue of the *Texas Register* (30 TexReg 3965).

Justification for the rule is that with the adoption, the changes reflects that federal law supercedes labeling. The change under §599.2(a) is made because federal law supercedes state regulation. The words "label requirements" under §599.2(b) are added for clarification. The changes in §599.2(c) are made for grammatical clarification. The changes under §599.2(d) by using the word "sticker" reflects the current practice and terminology. The change under §599.2(e) is done to more accurately reflect the difference between monitoring and baiting systems. The last change under §599.2(f) adds the uniform requirement of keeping the records for two years.

The rule will function by clarifying the requirements as to the controlling law and using the correct terminology of the industry. The record keeping requirement will permit the Board staff to monitor applications better by having immediate access to the records.

No comments were received.

The amendment is adopted under the Structural Pest Control Act, Chapter 1951 of the Occupations Code, which provides the Texas Structural Pest Control Board with the authority to license and regulate the structural pest control industry.

§599.2. Subterranean Termite Post Construction Treatments.

(a) All pesticide applications must be made in accordance with the directions and precautions specified on the labeling of the pesticide used.

(b) A treatment of less than the entire structure will be permitted to accommodate the customer's desires and to allow the treating company to perform the job in a manner prescribed by their professional evaluation and label requirements.

(c) All treatments must strictly adhere to the procedures outlined in the disclosure statement required in §599.4 of this title (relating to Termite Treatment Disclosure Documents). A deviation will be permitted when unexpected circumstances occur necessitating a change in the treatment and the certified applicator responsible for the treatment provides the customer with a written addendum to the contract or disclosure documents at the completion of the treatment.

(d) Upon completion of a termite treatment, other than a bait treatment, the company responsible for providing the treatment must leave a durable sticker on the wall adjacent to the water heater, electric breaker box, beneath the kitchen sink or in the interior bath trap access giving the name and address of the licensee, product, method or device used, the final date of the treatment, and a statement that the notice should not be removed.

(e) For a termite treatment using a bait product, the requirement to place a durable sticker applies at the time of the first placement of bait systems that include a pesticide.

(f) The business license holder or, in the case of the certified noncommercial applicator, the applicator must keep and maintain a correct and accurate copy of the Termite Treatment Disclosure Documents for a period of two (2) years.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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22 TAC §599.3

The Texas Structural Pest Control Board adopts an amendment to §599.3 concerning Subterranean Termite Pre-Construction Treatments with changes to the proposed text as published in the July 8, 2005, issue of the *Texas Register* (30 TexReg 3966).

Justification for the rule is that with the adoption, the changes reflect that termiticide labels have a wide range of rates. Since federal law is the standard, the regulation changes will now reflect federal law. The change on paperwork reflects the need to reduce paperwork and to reflect the federal law requirements. Borates application rates are also reflected in these changes. Square foot is now replaced with appropriate unit of measurement to again comply with the federal law requirements. Email is now added as a notification method. Finally, more discretion is added for assessing penalties for minor violations of the notification requirement.

The rule will function by clarifying the requirements as to the controlling law and using the correct terminology of the industry. The changes also reflects the use of the latest technology available to the industry and permits the use of email for notification purposes.

Mr. Jeff Lloyd and Mr. Ron Swab of Nisus Corp. objected to the proposed changes on partial treatments. The individuals felt the changes lead to inadequate consumer protection, creates confusion and arbitrarily restricts approved treatments. They requested that a vote be delayed.

The Board does not agree with the comments. The proposed changes do not contradict existing federal approved labels.

Mr. Mitch Wassum of Collin Services also spoke. He echoed the comments of the representatives of Nisus Corp. Mr. Wassum asked the Board to get rid of partial treatments and questioned the Board's authority to regulated under Occ. Code §1951.206.

The Board does not agree with the comments and refers to the previous comments made to the representatives of Nisus Corp. In addition, the Board does not agree with the interpretation proposed by Mr. Wassum. Legal counsel has advised the Board that its interpretation of partial treatments does not contradict Occ. Code §1951.206.

Mr. Errol Cohen of Bizzy Bee commented on the rule. Mr. Cohen feels that the partial, full and spot treatment creates confusion and are no longer applicable.

The Board disagrees with the comments because the Board is allowed to interpret federally approved labels and use those labels when creating definition of treatments.

Mr. Don Shultz of Hometeam Pest also questioned the wording as confusion. Mr. Shultz supported the comments of Nisus Corp.

The Board does not agree with the comments. The proposed changes do not contradict existing federal approved labels.

The amendment is adopted under the Structural Pest Control Act, Chapter 1951 of the Occupations Code, which provides the Texas Structural Pest Control Board with the authority to license and regulate the structural pest control industry.

§599.3. Subterranean Termite Pre-Construction Treatments.

(a) Sections (b) - (f) does not apply to baits or baiting systems.

(b) All pesticide liquid applications must be made by using the application rates and methods and by following the precautionary statements on the labeling of the pesticide being used.

(c) For a full treatment, the entire structure must be treated to provide a continuous horizontal and vertical barrier as described on the pesticide label including the posting of a treatment sticker and the final treatment to be performed within thirty (30) days of notification of completion of landscaping or one year from the date of completion of construction, whichever comes first. However, when construction has proceeded to the point that all areas cannot be treated before the company providing the treatment is called to perform the application, a partial treatment will be permitted if the owner of the structure or the person in charge of the construction and the certified applicator for the pest control company sign a statement attesting to the construction conditions, and attach it to the contract with an amended diagram or blueprint or building plat showing the exact areas to be treated and send copies to the owner of the property within seven (7) days of the application. A copy of the contract with an amended diagram or blueprint or building plat showing the exact areas to be treated must be made available to the Board upon the Board's request. A partial treatment will also be permitted if allowed by label directions and if the licensee proposing the treatment issues a Termite Treatment Disclosure Document prior to the treatment.

(d) In order to comply with subsection (c) of this section, it will be necessary to return to the pretreatment site after the slab has been poured and/or piers and support beams have been placed to complete the treatment for the vertical barrier.

(e) Treatment of the wood framing must be disclosed as a partial treatment.

(f) Notice of all pre-construction treatments with contracts requiring treatment of a structure other than a single family dwelling must be called, e-mailed or faxed in to the Texas Structural Pest Control Board between the hours of 6:00 a.m. and 9:00 p.m. using the specified telephone or fax number at least four (4), and no more than twenty four (24) hours prior to termiticide application. The licensee must provide address and site location, type of treatment (partial or full), date and time of treatment, approximate and appropriate unit of measurement used under contract and the name and physical address of the business licensee. If the treatment is cancelled, notice of cancellation must be sent using the specified telephone, e-mail address or fax number within one hour of the time the licensee learns of the cancellation.

(g) For all commercial pre-construction treatments, the licensee must maintain records of the appropriate unit of measurement treated per application site, amount of termiticide used per application site, rate at which termiticide is mixed for each application site, number of application tanks which were in use for the treatment, the capacity, in gallons, of each application tank, and the start and stop time for the treatment. The business license holder or, in the case of the certified noncommercial applicator, the applicator must keep and maintain a correct and accurate copy of the pre-construction treatment records for a period of two (2) years. A baiting system may be used in lieu of a pre-construction treatment if applied within thirty (30) days of notification of completion of landscaping. If a physical device is used, the appropriate unit of measurement of the physical device must be recorded and a diagram describing the installation must be provided.

(h) Any violation of this section may result in an administrative penalty of not less than $3000 per violation and is considered a base penalty 3.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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22 TAC §599.4

The Texas Structural Pest Control Board adopts an amendment to §599.4 concerning Termite Treatment Disclosure Documents with changes to the proposed text as published in the July 8, 2005, issue of the *Texas Register* (30 TexReg 3967).

Justification for the rule is that with the adoption, the changes clarifies by adding the word "written" to the word estimate. Other changes were made for grammatical reasons. The federal law standard of appropriate unit of measurement is incorporated into the regulation. Wording was also added to reflect the industry practice that a different company may treat under the warranty. Changes were also added to the definition of a full treatment. The SPCB/D-2 form is also revised and changed to SPCB/D-3 form with the clarifications on that document

The rule will function by clarifying the requirements as to the controlling law and using the correct terminology of the industry. The definition changes will help licensees understand how to classify a treatment.

No comments were received.

The amendment is adopted under the Structural Pest Control Act, Chapter 1951 of the Occupations Code, which provides the Texas Structural Pest Control Board with the authority to license and regulate the structural pest control industry.

§599.4. Termite Treatment Disclosure Documents.

(a) As part of each written estimate submitted and before conducting an initial termite treatment for a customer, the pest control company proposing the treatment must present the prospective customer or designee with the disclosure documents. Verbal estimates may be provided to customers to advise of a general range of treatment costs, but a written estimate must be provided before offering a contract and beginning a treatment.

(b) Each termite treatment disclosure document must include, but is not limited to:

(1) a diagram or blueprint or building plat and description of the structure or structures to be treated include the following:

(A) the address or physical location;

(B) approximate perimeter measurements of the structure as accurately as practical;

(C) areas of active or previous termite activity;

(D) areas to be treated;

(2) a label for any pesticide recommended or used. If a physical device is used, the appropriate unit of measurement of the physical device must be recorded and a diagram describing the installation must be provided.

(3) the complete details of the warranty provided if any; including:

(A) if the warranty does not include the entire structure treated, the areas included must be listed;

(B) the time period of the warranty;

(C) the renewal options and cost;

(D) the obligations of the pest control operator to retreat for termite infestations or repair damage caused by termite infestations within the warranty period; and

(E) conditions that could develop as a result of the owners action or inaction that would void the warranty; and

(F) name of the pest control company responsible for the warranty.

(4) the signature of approval on the diagram by a certified applicator or licensed technician in the termite category employed by the company making the proposal.

(5) the concentration of any liquid termiticide application to be used on the treatment or minimum number of baiting systems to be installed.

(6) for subterranean termite post construction treatments the following statements and definitions in at least 8-point type: A termite treatment may be a partial treatment or spot treatment using chemical or approved physical barriers or a baiting system. These types of treatments are defined as follows:

(A) Partial. This technique allows a wide variety of treatment strategies but is more involved than a spot treatment (see definition below). Ex.: treatment of some or all of the perimeter, bath traps, expansion joints, stress cracks, portions of framing, walls and bait locations.

(B) Pier and Beam. Generally defined as the treatment of the outer perimeter including porches, patios and treatment of the attached garage. In the crawl space, treatment would include any soil to structure contacts as well as removal of any wood debris on the ground.

(C) Slab Construction. Generally defined as treatment of the perimeter and all known slab penetrations as well as any known expansion joints or stress cracks.

(D) Spot Treatments. Any treatment which concerns a limited, defined area less than ten (10) linear or square feet that is intended to protect a specific location or "spot". Often there are adjacent areas susceptible to termite infestation which are not treated.

(E) Baiting Systems. This type of treatment may include interior and/or perimeter placement of monitoring of baiting systems along with routine inspection intervals. The baiting technique may include one or more locations as prescribed by the product label and instructions.

(F) Barriers. If a physical device is used, the square footage of the physical device must be recorded and a diagram describing the installation will be provided.

(7) For all termite treatments the following statement in at least 8-point type: For all treatments there will be a diagram showing exactly what will be treated. Treatment specifications and warranties for those treatments may vary widely. Review the pesticide label provided to you for minimum treatment specification. If you have any questions, contact the pest control company or the Texas Structural Pest Control Board, P.O. Box 1927, Austin, Texas 78767-1927. Telephone number (512) 305-8270.

(8) For pre-construction treatments, the Board-approved Termite Pretreatment Disclosure Document (SPCB/D-3) must be provided to, and signed by, the contractor or purchaser of the pretreatment service prior to the beginning of the treatment. A signed copy must be kept in the pest control use records of the licensee. Failure to provide this document prior to treatment will result in an administrative penalty of up to $3000 per violation. The text and format of the termite pre-treatment disclosure document shall be as follows:
Figure: 22 TAC §599.4(b)(8)

(9) For drywood termite and related insect treatments the following statements and definitions in at least eight (8) point type: A drywood termite or related insect treatment may be a full treatment or limited treatment. These types of treatments are defined as follows:

(A) Full Treatment: Generally defined as a treatment to control 100% of the insect infestation by tarpaulin fumigation or appropriate sealing method. A full treatment by fumigation is designed to eliminate every insect colony. It should include the infested structure and all attached structures.

(B) Limited Treatment: Any treatment less than full treatment. A treatment which has a limited and defined area that is intended to protect a specific location. Often there are adjacent areas susceptible to dry wood termite or related insect infestations which are not treated. Because of the nature of wood destroying insects, these untreated areas may continue to harbor dry wood termites and unrelated insects throughout the structure without detection.

(10) A consumer information sheet as required by §595.7 of this title (relating to Consumer Information Sheet).

(c) Before conducting an initial termite treatment for the customer, the pest control company proposing the treatment must present the prospective customer or designees with a diagram or blueprint or building plat and description of the structure(s) to be treated including the following:

(1) construction details needed for clarity of the report;

(2) known wood destroying insect activity;

(3) areas of conditions conducive to infestation by wood destroying insects; and

(4) other information about construction relevant to the treatment proposal.

(d) For any retreatment of a property for an existing customer, the pest control company must provide the following before conducting the retreatment:

(1) the label; if different than that used in the preceding treatment(s);

(2) a diagram or updated diagram of the structure showing areas to be treated;

(3) any changes to the warranty information;

(4) a consumer information sheet as required by §595.7 of this title.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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22 TAC §599.5

The Texas Structural Pest Control Board adopts an amendment to §599.5 concerning Inspection Procedures with no changes to the proposed text as published in the July 8, 2005, issue of the *Texas Register* (30 TexReg 3969).

Justification for the amendment is that with the adoption, wording and grammar will be corrected to avoid confusion. The word "termites" was replaced with "wood destroying insects" to reflect the greater range of insects who eat cellulose.

The amended rule will function by providing clarity in the regulations. The changes will also reflect the greater range of wood destroying insects that must be considered during an inspection.

No comments were received regarding the proposed amendment.

The amendment is adopted under the Structural Pest Control Act, Chapter 1951 of the Occupations Code, which provides the Texas Structural Pest Control Board with the authority to license and regulate the structural pest control industry.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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22 TAC §599.6

The Texas Structural Pest Control Board adopts an amendment to §599.6 concerning Real Estate Transaction Inspection Reports with changes to the proposed text as published in the July 8, 2005, issue of the *Texas Register* (30 TexReg 3970).

Justification for the amendment is that the adoption will correct grammar in the regulation. The adopted amendment will also provide clarity by listing the business license holder issuing the report instead of the words "inspecting company." A two year requirement for keeping records is also added.

The amended rule will function by providing clarity in the regulations. The two year record keeping requirement will assist in investigations on this particular rule.

No comments were received regarding the proposed amendment.

The amendment is adopted under the Structural Pest Control Act, Chapter 1951 of the Occupations Code, which provides the Texas Structural Pest Control Board with the authority to license and regulate the structural pest control industry.

§599.6. Real Estate Transaction Inspection Reports.

(a) All inspection reports issued regarding the visible presence or absence of termites and other wood destroying insects in connection with a real estate transaction must be made on a form prescribed and officially adopted by the Board.

(b) The report form will include a space to report conditions consistent with §599.5 of this title (relating to Inspection Procedures).

(c) The Texas Official Wood Destroying Insect Report Form SPCB/T-4 is adopted. The form may be examined in the office of the Texas Register and the Texas Structural Pest Control Board. Forms for reproduction may be obtained from the Texas Structural Pest Control Board office, P.O. Box 1927, Austin, Texas 78767-1927.

(d) For each inspection, copies of the completed form must be prepared for the:

(1) person who ordered the inspection; and

(2) business files of business license holder issuing the report.

(e) The licensee issuing the report must retain records of inspection reports for a minimum of two (2) years.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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22 TAC §599.7

The Texas Structural Pest Control Board adopts an amendment to §599.7 concerning Posting Notice of Inspection with no

changes to the proposed text as published in the July 8, 2005, issue of the *Texas Register* (30 TexReg 3971).

Justification for the rule is that with the adoption, the title of the section is changed to avoid confusion. The use of sticker will reflect current industry practice.

The rule will function by having the name of the section reflect that an inspection has taken place. Also, the use of the word "sticker" reflects the industry practice and will provide better clarity to customers.

No comments were received.

The amendment is adopted under the Structural Pest Control Act, Chapter 1951 of the Occupations Code, which provides the Texas Structural Pest Control Board with the authority to license and regulate the structural pest control industry.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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22 TAC §599.11

The Texas Structural Pest Control Board adopts an amendment to §599.11 concerning Structural Fumigation Requirements with changes to the proposed text as published in the July 8, 2005, issue of the *Texas Register* (30 TexReg 3971).

Justification for the rule is that with the adoption, the rule as will be updated to meet the requirements of federal and state law. Other changes were made to clarify the responsibility of the licensee responsible for the structural fumigation. The use of the word "guard" makes clear the duties of the person monitoring the fumigation. The study requirement change reflects the actual amount of material that is not duplicative that can be studied on a yearly basis.

The rule will function by having the by placing the primary responsibility on the certified applicator for job security. Also, study requirements have been revised to after receiving feedback from the training industry on structural fumigations.

No comments were received.

The amendment is adopted under the Structural Pest Control Act, Chapter 1951 of the Occupations Code, which provides the Texas Structural Pest Control Board with the authority to license and regulate the structural pest control industry.

§599.11. Structural Fumigation Requirements.

(a) Fumigation of structures to control wood destroying insects must be performed only under the direct on-site supervision of a certified applicator licensed by the Board in the category of structural fumigation. Direct on-site supervision means that the certified applicator exercising such supervision must be present at the site of the fumigation during the entire time the fumigants are being released and at the time property is released for occupancy.

(b) Fumigation must be performed in compliance with all label requirements applicable to state and federal laws and regulations.

(c) Prior to the commencement of fumigation, warning signs must be posted in plainly visible locations on or in the immediate vicinity of all entrances to the space under fumigation and must not be moved until fumigation and ventilation have been completed, and the premises determined safe for reocccupancy. Ventilation must be conducted with due regard for the public safety.

(d) When directed by the label, local fire authorities or, when not available, local police authorities, must be notified in writing or by e-mail prior to introduction of the fumigant and at the time the structure is released for occupancy.

(e) The space to be fumigated must be vacated by all occupants prior to the commencement of fumigation. The space to be fumigated must be sealed in such manner to assure concentration of the fumigant released has been retained in compliance with the manufacturer's recommendations.

(f) Warning signs must be printed in red on white backgrounds and must contain the following statement in letters not less than two inches in height; "Danger-Fumigation." They must also depict a skull and crossbones, not less than one inch in height, the name of the fumigant, the date and time fumigant was introduced, and the name, address, and telephone number where the certified applicator performing the fumigation may be reached twenty four (24) hours a day.

(g) On any structure that has been fumigated, the certified applicator responsible for the fumigation must, immediately upon completion, post a durable sticker on the wall adjacent to the electric breaker box, water heater, beneath the kitchen sink or in the interior bath trap access. This must be a durable sticker not less than one inch by two inches in size. It must have the name of the certified applicator, date of fumigation, fumigant used, and the purpose for which it was fumigated (target pest).

(h) A certified applicator performing fumigation must use adequate warning agents with all fumigants which lack such properties. When conditions involving abnormal hazards exist, the person exercising direct on-site supervision must take such safety precautions in addition to those prescribed to protect the public health and safety. The certified applicator responsible for the fumigation must visibly inspect the structures to assure vacancy prior to introduction of fumigant.

(i) The certified applicator responsible for the fumigation must also post a person or persons to guard the location from the time the fumigant is introduced until all tarpaulins and seals are removed and the label concentration for aeration is reached. The certified applicator responsible for the fumigation must then secure all entrances to the structure in such a manner as to prevent entry by anyone other than the certified applicator or licensed individual responsible for the fumigation. The structure must remain secured until the concentration indicated by the fumigant label for release for occupancy is reached.

(j) For the purpose of maintaining proper safety and establishing responsibility in handling the fumigants, the business license holder must compile and retain for a period of at least two (2) years a report for each fumigation job and/or treatment. The person posted at the location must deter entry into the structure by routinely inspecting the structure under fumigation at least once each hour. The person posted at the location must be alert and on duty to prevent entry into the structure while the structure while the fumigant is present. The report for

each fumigation job or treatment shall contain the following information:

(1) name and address of pest control company;

(2) name and address of property and owner;

(3) type of roof;

(4) cubic feet fumigated;

(5) target pest or pest controlled;

(6) fumigant or fumigants used and amount;

(7) name of warning agent and amount used;

(8) type of sealing method;

(9) temperature and wind conditions;

(10) time gas introduced and aerated (date and hour);

(11) name of licensee (certified applicator);

(12) list of any extraordinary safety precautions taken;

(13) time released for occupancy (signed by certified applicator);

(14) the date and hour fire or police authorities were notified; and

(15) verification of clearing procedures and identification of devices used.

(k) Fumigations for the purpose of controlling wood destroying insects are subject to the provisions of §599.4 of this title (relating to Disclosure).

(l) Every business license holder engaged in application of a fumigant is required to use an approved clearance device as prescribed on the fumigant label.

(1) This approved calibrated clearance device must be used as required by the label. As appropriate, this device must be calibrated in accordance with manufacturer's recommendations.

(2) An independent facility or person must perform calibration of the clearance device annually. Calibration shall be in compliance with the manufacturer's requirements.

(3) Proof of calibration must be kept on file for a period of two (2) years and available for review by Board personnel and by placing a yearly validation on the clearance device.

(m) The certified applicator responsible for the fumigation must be responsible for following label requirements for aeration and clearing of the structure that is being fumigated.

(n) The word "trained" is defined as a person having the same qualifications as an apprentice unless the label states more stringent requirements in the application of the fumigant.

(o) Notice of all structural fumigations with contracts requiring treatment of a structure must be called, emailed, or faxed to the Texas Structural Pest Control Board between the hours of 6:00 a.m. and 9:00 p.m. using the specified telephone number, email address or fax number at least four (4), and no more than twenty four (24) hours prior to the structural fumigation application. The licensee must provide address and site location, chemical to be used, date and time of treatment, approximate square footage under contract and the name and physical address of the business licensee. If the structural fumigation is cancelled, notice of the cancellation must be sent using the Board specified telephone number, email address or fax number within one to six hours of the time the licensee learns of the cancellation. Any violation of 22 TAC §599.11(o) will result in a fine of up to $3000 based on a penalty matrix and is considered a base penalty 3.

(p) Before an individual may apply for an initial certified applicator's license in the structural fumigation category (with the exception listed in §599.11(r), the following experience requirements must be met.

(1) Attend a forty (40) hour structural fumigation school that has at least sixteen (16) hours of hands on training, and has been approved by the Executive Director; or

(2) Obtain forty (40) hours of on-the-job training with at least sixteen (16) hours of hands on training that is approved by the Executive Director.

(3) A minimum of one CEU per year in structural fumigation is required to maintain the certification following initial testing.

(q) Current certified applicators must conduct/perform four (4) hours of training per year to maintain their certification.

(1) A verifiable performance/training records form will be made available to the Board upon request. These performance/training records forms shall be kept on a format prescribed by the Board in the business file for at least two (2) years after termination of employment. The verifiable performance/training records form will be made available to the certified applicator or technician upon written request.

(2) A minimum of one CEU per year in structural fumigation is required to maintain the certification following initial testing.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 19, 2005.

TRD-200504139
Murray Walton
Executive Director
Texas Structural Pest Control Board
Effective date: October 9, 2005
Proposal publication date: July 8, 2005
For further information, please call: (512) 305-8270

♦ ♦ ♦

REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Adopted Rule Reviews

Texas Racing Commission

Title 16, Part 8

The Texas Racing Commission has completed its review of Chapter 321, Pari-Mutuel Wagering. This review was conducted in accordance with Government Code, §2001.039 as published in the July 8, 2005, issue of the *Texas Register* (30 TexReg 4018).

The Commission has determined that the reasons for adopting Chapter 321 continue to exist. Chapter 321 prescribes all licensing and operational requirements for the conduct of pari-mutuel wagering on horse and greyhound races in Texas, including definitions, a racetrack's pari-mutuel department operations, wagering information and race results, mutuel tickets and vouchers, totalisator standards, tote facilities and equipment, tote operations, tote reports and logs, wagering on races conducted in Texas, the distribution of pari-mutuel pools, wagering on simulcast races, common pooling, and ticketless electronic wagering.

The Chapter 321 review revealed that some rules should be amended. Therefore, the Commission has adopted amendments, with or without changes to the proposed text, to §§321.1, 321.3, 321.13, 321.21, 321.33, 321.35, 321.103, 321.105, 321.121, 321.123, 321.139, 321.143, 321.312, 321.313, and 321.315, and new §§321.601, 321.603, 321.605, 321.607, 321.609, 321.621, 321.623, 321.625, and 321.627. The adopted amendments and new sections are published elsewhere in this issue of the *Texas Register*.

The Commission readopted the following sections without amendment: §§321.5, 321.7, 321.9, 321.11, 321.15, 321.17, 321.19, 321.23, 321.25, 321.27, 321.29, 321.31, 321.34, 321.37, 321.39, 321.41, 321.43, 321.45, 321.101, 321.107, 321.124, 321.125, 321.127, 321.131, 321.133, 321.135, 321.137, 321.141, 321.201, 321.203, 321.205, 321.207, 321.209, 321.211, 321.213, 321.215, 321.217, 321.301 - 321.311, 321.314, 321.316 - 321.318, 321.401, 321.403, 321.405, 321.407, 321.409, 321.411, 321.413, 321.415, 321.417, 321.419, 321.421, 321.451, 321.453, 321.455, 321.457, 321.459, 321.461, 321.501, 321.503, 321.505, 321.507, and 321.509.

No comments were received regarding the chapter review.

This concludes the review of Chapter 321, Pari-Mutuel Wagering.

TRD-200504048
Elizabeth Garza Goins
General Counsel
Texas Racing Commission
Filed: September 13, 2005

♦ ♦ ♦

Texas Veterans Commission

Title 40, Part 15

The Texas Veterans Commission re-adopts the review of following section of Chapter 453, Historically Underutilized Business Program, located in Title 40, Part 15, of the *Texas Administrative Code*:

Chapter 453 - §453.1

The proposed review was published in the May 13, 2005, issue of the *Texas Register* (30 TexReg 2895).

The agency's reason for re-adopting the rules contained in this chapter continues to exist.

No comments were received regarding re-adoption of the review.

This concludes the review of Chapter 453.

TRD-200504079
James E. Nier
Executive Director
Texas Veterans Commission
Filed: September 14, 2005

♦ ♦ ♦

TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 22 TAC §75.7(a)

Fee		Board Fee	§153(b) Required by 78th Legislature	TxOnline Fee	Course Work Verification	Office of Patient Protection	Total
1.	DC Application	135.00	200.00		50.00		385.00
2.	DC License Renewal--Active Renewal	135.00	200.00	5.00		1.00	341.00
3.	Late DC License Renewal--Under 90 Days	202.50					202.50
4.	Late DC License Renewal--Over 89 Days but Under 1 Year	270.00					270.00
5.	DC License Re-Instatement	135.00	200.00				335.00
6.	Jurisprudence Examination/Re-examination	135.00	200.00				335.00
7.	Inactive License Processing	No Charge	No Charge	No Charge	No Charge	No Charge	No Charge
8.	New DC License--Prorated	125.00				5.00	130.00
9.	DC License Replacement	25.00					25.00
10.	Facility License Replacement	25.00					25.00
11.	Annual Certificate Replacement	10.00					10.00
12.	Certification of License	25.00					25.00
13.	Continuing Education Course Registration (Yearly per Course)	25.00					25.00
14.	Radiologic Technician Registration	35.00					35.00
15.	Radiologic Technician Renewal	35.00				1.00	36.00
16.	Facility License--New Facility	65.00				5.00	70.00
17.	Facility License Renewal	65.00		2.00		1.00	68.00
18.	Late Facility License Renewal--Under 90 Days	50.00					50.00
19.	Late Facility License Renewal--Over 89 Days	100.00					100.00
20.	Verification of Educational Courses/Grades	50.00					50.00
21.	Verification of Texas Licensure (per Request by Chiropractor) Plus $1 Postage and Handling	2.00					3.00
22.	Returned Check Fee	25.00					25.00

Figure: 22 TAC §75.9(a)

TEXAS BOARD OF CHIROPRACTIC EXAMINERS

Enforcement Division

COMPLAINT FORM

333 Guadalupe, Ste 3-825
Austin, TX 78701

(512) 305-6700 phone
(512) 305-6705 fax

Notice: Except for the name of the chiropractor or facility, all information requested is voluntary, but failure to provide the requested information may delay or prevent the investigation of your complaint. As much information as possible should be provided in connection with the complaint. The information on this form will be used in part to determine whether a violation of the Chiropractic Act or Board rules has occurred.

PERSON MAKING COMPLAINT

FULL NAME			HOME PHONE
BUSINESS NAME (*IF APPLICABLE*)			WORK PHONE
STREET ADDRESS			FAX NUMBER
CITY	STATE	ZIP	EMAIL

CHIROPRACTOR OR FACILITY COMPLAINT IS ABOUT

FULL NAME (CHIROPRACTOR OR OWNER OF FACILITY)			LICENSE NUMBER (IF KNOWN)
FACILITY NAME			WORK PHONE
STREET ADDRESS			
CITY	STATE	ZIP	

NATURE OF COMPLAINT (check all that apply)

☐ Quality of Care	☐ Records Release	☐ Practicing Beyond Scope
☐ Insurance Fraud	☐ Substance Abuse	☐ Unsure
☐ Excessive Treatment or Charges	☐ Billing for Services not Rendered	☐ Other _____
☐ Unprofessional Conduct	☐ Sexual Misconduct	
☐ Misdiagnosis	☐ Impairment/Medical Condition	_____
☐ Poor Record Keeping	☐ Advertising	_____
☐ Solicitation of Patients	☐ Billing Practices	_____
☐ Unsanitary Conditions	☐ Unlicensed Practice	_____

WITNESS INFORMATION

WITNESS, IF ANY			WITNESS, IF ANY		
WITNESS NAME		PHONE NO.	WITNESS NAME		PHONE NO,
ADDRESS			ADDRESS		
CITY	ST	ZIP	CITY	ST	ZIP
If needed, is this witness willing to support your complaint by testifying at a hearing? ☐ YES ☐ NO ☐ UNKNOWN			If needed, is this witness willing to support your complaint by testifying at a hearing? ☐ YES ☐ NO ☐ UNKNOWN		

ADDITIONAL INFORMATION

IF AN ATTORNEY IS INVOLVED, COMPLETE THIS SECTION	IF SECOND OPINION RECEIVED, COMPLETE THIS SECTION
ATTORNEY NAME PHONE NO.	PRACTITIONER NAME PHONE NO,
ADDRESS	ADDRESS
CITY ST ZIP	CITY ST ZIP
HAVE YOU CONTACTED THE CHIROPRACTOR OR FACILITY CONCERNING YOUR COMPLAINT? ☐ YES ☐ NO WHEN: _____ HOW: ☐ Telephone ☐ Letter ☐ Other (please specify) _____ _____ **DID CHIROPRACTOR OR FACILITY RESPOND?** ☐ YES ☐ NO Action taken _____	**HAVE YOU COMPLAINED TO ANY OTHER ORGANIZATION?** ☐ YES ☐ NO WHO: _____ WHEN: _____ HOW: ☐ Telephone ☐ Letter ☐ Other (please specify) _____ _____ **DID ORGANIZATION RESPOND?** ☐ YES ☐ NO Action taken _____

DETAILS OF COMPLAINT

STATE YOUR COMPLAINT	PLEASE WRITE LEGIBLY. USE A SEPARATE COMPLAINT FORM FOR EACH INDIVIDUAL PRACTITIONER. PROVIDE CLEAR AND CONCISE INFORMATION SUCH AS: THE SEQUENCE OF EVENTS SURROUNDING YOUR COMPLAINT, DATES OF TREATMENTS OR INCIDENTS, AND COPIES (DOCUMENTS WILL NOT BE RETURNED) OF ALL RELEVANT DOCUMENTS REGARDING YOUR COMPLAINT (LETTERS, CORRESPONDENCE, WITNESS STATEMENTS, CONTRACTS, POLICE REPORTS, BILLS, OR PHOTOGRAPHS). IF MORE SPACE IS NEEDED, PLEASE USE ADDITIONAL PAPER.

PLEASE RETURN TO:
Texas Board of Chiropractic Examiners 333 Guadalupe, Ste 3-825 Austin, TX 78701 (512) 305-6705 fax

I ATTEST THAT ALL STATEMENTS MADE BY ME IN RELATION TO THIS COMPLAINT ARE TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF.
I ACKNOWLEDGE THAT THE TEXAS BOARD OF CHIROPRACTIC EXAMINERS MAY PROVIDE A COPY OF THIS FORM TO THE PERSON AGAINST WHOM THE COMPLAINT IS MADE.
I AGREE TO TESTIFY IN ANY HEARINGS THAT MAY ARISE AS A RESULT OF THIS COMPLAINT.
I UNDERSTAND THAT THE TEXAS BOARD OF CHIROPRACTIC EXAMINERS DOES NOT REPRESENT CITIZENS SEEKING THE RETURN OF THEIR MONEY OR OTHER PERSONAL REMEDIES OR HAVE JURISDICTION OVER BUSINESS/INSURANCE MATTERS.

SIGNATURE **DATE**

_____ _____

Please sign the release below. Failure to sign the release may result in a delay of the investigation of your complaint.

RELEASE OF INFORMATION AUTHORIZATION

I hereby authorize any person, including, but not limited to, hospitals, institutions, health care providers, clinics, employers (past and present), laboratories, attorneys, insurance companies, government agencies, or other public or private agencies to release to the Texas Board of Chiropractic Examiners, its representatives, agents or employees any and all information about me, including documents, reports, records, files, testimony or any other documents regardless of form or content.

PATIENT NAME: _____ DATE OF BIRTH: _____

SIGNATURE OF PATIENT (Parent or, legal guardian, if applicable):

_____ DATE: _____

If filled out by someone other than complaintant, please provide the name and contact information of the person (s) who assisted in filling out this form. Name/Contact information_____

Figure: 22 TAC §599.4(b)(8)

PROPER PRE-CONSTRUCTION SUBTERRANEAN TERMITE TREATMENTS
A Guide for Builders and Consumers

Texas Structural Pest Control Board
PO Box 1927
Austin, Texas 78767-1927
Telephone No. (512) 305-8250

I. Definitions

The Texas Structural Pest Control Board licenses pest control operators and regulates the application of pesticides for the prevention or control of subterranean termites. Because of the importance of treatments made to buildings under construction (commonly called pre-treats), this publication has been prepared for builders and consumers which hire pest control operators for these preventative termite treatments. Pre-construction treatments may include soil treatments, bating systems, treatments of wooden structural elements, physical barriers, methods and other devices.

A pre-construction treatment may be a full treatment or a partial treatment, defined in the following manner.

A. FULL TREATMENT

Effective preconstruction treatment for subterranean termite prevention requires the establishment of complete vertical and horizontal approved physical or chemical barriers between wood in the structure and the termite colonies in the soil.

For Horizontal Chemical Barriers, applications shall be made using a low pressure spray after grading is completed and prior to the pouring of the slab or footing to provide thorough and continuous coverage of the area being treated.

For Vertical Chemical Barriers, establish vertical barriers in areas such as around the base of foundations, plumbing lines, backfilled soil against foundation walls and other areas which may warrant more than just a horizontal barrier.

B. PARTIAL TREATMENT

A partial treatment is anything less than a full treatment as described above. A partial treatment only protects the areas treated from wood destroying insects. The areas chemically treated must be treated using at least the minimum labeled rate.

A pre-construction treatment of parts of the framing or physical barriers and devices installed at slab penetrations are considered partial treatments. Baits shall be disclosed as bait treatments.

II. APPLICATION RATES

Labels can and do differ. Read and follow label directions. Builders and consumers should ask for a copy of the label.

1) Unless otherwise directed by the label, fill material to be covered by a slab is treated at a rate of 1 gallon per 10 square feet (soil fill). For coarse fill, use 1.5 gallons per 10 square feet or as specified on the product label.

2) Unless otherwise directed by the label, soil backfill areas next to walls, piers, pipes and under "critical areas" like slab expansion joints are treated with 4 gallons per 10 linear feet per foot of depth. (This includes fill areas inside chimneys and earth-filled porches). 3) Hollow masonry units receive 2 gallons per 10 linear feet. Though a concrete block wall may have multiple chambers (2 or 3 hole blocks), it is counted as one hollow void when calculating the amount of termiticide needed for treatment. Review specific label requirements for proper mixture rates and application procedures.

III. CONTACTING THE STRUCTURAL PEST CONTROL BOARD

The Texas Structural Pest Control Board does not regulate pricing of treatments. However, we are interested in situations where the price is only a fraction of the cost of materials needed to do the job correctly. Remember, comparing the bid price to the size of the structure and the cost of termiticide does not include costs such as insurance, travel, labor and other costs associated with overhead. **FURTHER, A CONTRACTOR MAY HAVE CIVIL OR CRIMINAL LIABILITY IF THEY CONSPIRE TO VIOLATE STRUCTURAL PEST CONTROL BOARD REGULATIONS.**

Termiticide labels have specific directions about the product's use. Pest Control Companies must follow these directions and Texas Structural Pest Control Board regulations including 599.3 (a) and (b):

(a) All pesticide applications must be made by using the application rate and methods and by following the precautionary statements on the labeling of the pesticide being used.
Treatments using less than label recommended concentrations at higher volume applications are prohibited for preconstruction treatments,
(b) for a full treatment the entire structure shall be treated to provide a continuous horizontal and vertical barrier as described on the pesticide label including the posting of a treatment sticker and the final treatment to be performed within 30 days of notification of completion of landscaping or one year from the date of completion of construction, whichever comes first. Except, when construction has proceeded to the point that all areas cannot be treated before the company providing the treatment is called to perform the job, a partial treatment will be permitted if the owner of the structure or the person in charge of the construction and the certified applicator for the pest control company sign a statement attesting to the conditions, and attach it to the contract with an amended graph showing the exact areas treated.

Termiticides must be used at the prescribed rate, to protect the structure from termites and to comply with federal and state regulations.

The Texas Structural Pest Control Board will inspect specific treatments in response to consumer complaints or information that indicates a possible improper treatment. **THE PEST CONTROL COMPANY IS REQUIRED TO INFORM THE TEXAS STRUCTURAL PEST CONTROL BOARD 4-24 HOURS PRIOR TO PERFORMING THE TREATMENT.** The prior treatment notification requirement is specific to commercial preconstruction and is not required for single family dwellings. The Board will also inspect treatments during compliance inspections of pest control company operations and will randomly make inspections of job sites where treatments are in progress. Such on-site inspections typically involve collecting samples of the tank mix and soil samples of treatment sites following application. Questions about termite treatment procedures should be directed to the Texas Structural Pest Control Board office.

IV. TREATMENT REQUIREMENTS
For existing or post construction treatments, a variety of treatments may be used that include chemical, approved Texas Structural Pest Control Board physical barriers, methods and devices, and baiting systems. This information, furnished to the Texas Structural Pest Control Board, will allow us to inspect treatments in progress to ensure that proper procedures are being used. Keep in mind that an inspection by the Texas Structural Pest Control Board is not required for the treatment or construction to proceed. Inspections at pretreatment sites, both residential and commercial, will be made on a case-by-case basis.

It is the philosophy of this agency to combine firm but fair enforcement actions with an educational approach to obtain regulatory compliance.

TREATMENT IS:

A.	**Full**	[]
B.	**Partial**	[]
C.	**Bait**	[]
D.	**Commercial**	[]
E.	**Single Family**	[]

I have received a copy of the Guide for Builders and Commercial Customers.

_____

Signature of Customer or Contractor

_____

Date
SPCB/D-3

Figure: 30 TAC §116.12(16)(A)

TABLE I

MAJOR SOURCE/MAJOR MODIFICATION EMISSION THRESHOLDS

POLLUTANT designation[1]	MAJOR SOURCE tons/year	MAJOR MODIFICATION[2] tons/year	OFFSET RATIO minimum
OZONE (VOC, NOx)[3, 6]			
I marginal[7]	100	40	1.10 to 1
II moderate	100	40	1.15 to 1
III serious	50	25	1.20 to 1
IV severe	25	25	1.30 to 1
CO			
I moderate	100	100	1.00 to 1[4]
II serious	50	50	1.00 to 1[4]
SO_2	100	40	1.00 to 1[4]
PM_{10}			
I moderate	100	15	1.00 to 1[4]
II serious	70	15	1.00 to 1[4]
NO_x[5]	100	40	1.00 to 1[4]
Lead	100	0.6	1.00 to 1[4]

[1] Texas nonattainment area designations are specified in 40 Code of Federal Regulations §81.344.

[2] The major modification threshold is applicable only to existing major sources and shall be evaluated after netting, unless the applicant chooses to apply nonattainment new source review (NNSR) directly to the project. The appropriate netting triggers for existing major sources of NO_x and VOC are specified in §116.150 of this title (relating to New Major Source or Major Modification in Ozone Nonattainment Areas) and for other pollutants are equal to the major modification level listed in this table.

[3] VOC and NO_x are precursors to ozone formation and should be quantified individually to determine whether a source is subject to NNSR under §116.150 of this title. As specified in §116.150 of this title, for El Paso County, the NNSR rules apply to sources of VOC, but not to sources of NO_x.

[4] The offset ratio is specified to be greater than 1.00 to 1.

VOC = volatile organic compounds

NO_x = oxides of nitrogen

NO_2 = nitrogen dioxide

CO = carbon monoxide

SO_2 = sulfur dioxide

PM_{10} = particulate matter with an aerodynamic diameter less than or equal to ten microns

[5] Applies to the NAAQS for nitrogen dioxide (NO_2).

[6] For the Houston-Galveston-Brazoria, Dallas-Fort Worth, and Beaumont-Port Arthur eight-hour ozone nonattainment areas, if the United States Environmental Protection Agency promulgates rules requiring new source review permit applications in these areas to be evaluated for NNSR according to that area's one-hour standard classification, each application will be evaluated according to that area's one-hour standard classification. Evaluation includes both the threshold for determining if there is a major modification as well as the ratio of offsets required along with any other applicable requirement that depends upon an area's nonattainment classification.

[7] For areas designated as nonattainment for ozone under Federal Clean Air Act, Title I, Part D, Subpart 1 (42 United States Code, §7502), each application will be evaluated as if that area was designated as Marginal. Evaluation includes both the threshold for determining if there is a major modification as well as the ratio of offsets required along with any other applicable requirement that depends upon an area's nonattainment classification.

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Texas Building and Procurement Commission

Request for Proposal

The Texas Building and Procurement Commission (TBPC), on behalf of the Texas Department of Insurance - Division of Workers' Compensation (TDI - DWC), announces the issuance of **Request for Proposals (RFP) #303-6-10125**. TBPC seeks a 5-year lease of approximately 3,381 square feet of office space in the Corpus Christi area, Nueces County, Texas.

The deadline for questions is October 7, 2005; and the deadline for proposals is October 14, 2005 at 3:00 P.M. The award date is November 15, 2005. TBPC reserves the right to accept or reject any or all proposals submitted. TBPC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TBPC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TBPC Purchaser Kenneth Ming at (512) 463-2743. A copy of the revised RFP may be downloaded from the *Electronic State Business Daily* at http://esbd.tbpc.state.tx.us/1380/bid_show.cfm?bidid=61106.

TRD-200504080
Kenneth Ming
Purchaser
Texas Building and Procurement Commission
Filed: September 15, 2005

♦ ♦ ♦

Request for Proposal

The Texas Building and Procurement Commission (TBPC), on behalf of the Office of Attorney General, announces the issuance of **Request for Proposals (RFP) #303-6-10125**. TBPC seeks a 5-year lease of approximately 8,634 square feet of office space in the San Antonio area, Bexar County, Texas.

The deadline for questions is October 14, 2005, and the deadline for proposals is October 21, 2005 at 3:00 P.M. The award date is December 1, 2005. TBPC reserves the right to accept or reject any or all proposals submitted. TBPC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TBPC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TBPC Purchaser Kenneth Ming at (512) 463-2743. A copy of the revised RFP may be downloaded from the *Electronic State Business Daily* at http://esbd.tbpc.state.tx.us/1380/bid_show.cfm?bidid=61213.

TRD-200504136
Kenneth Ming
Purchaser
Texas Building and Procurement Commission
Filed: September 19, 2005

♦ ♦ ♦

Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of September 9, 2005, through September 15, 2005. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for these activities extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on September 21, 2005. The public comment period for these projects will close at 5:00 p.m. on October 21, 2005.

FEDERAL AGENCY ACTIONS:

Applicant: Johnye Slaughter; Location: The project is located in wetlands adjacent to the Gulf of Mexico and the Gulf Intracoastal Waterway, east of FM 457 and the Sargent Swing Bridge, at 2443 Canal Drive, in Sargent, Matagorda County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Cedar Lakes West, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 244790; Northing: 3185272. Project Description: The applicant proposes to retain 0.11 acre of fill. The lot at 2443 Canal Drive was filled in January 2002 without a Department of the Army permit. The wetlands were composed of salt-tolerant vegetation including Gulf cordgrass (Spartina spartinae), sea-oxeye daisy (Borrichia frutescens), saltwort (Batis maritima), and saltgrass (Distichlis spicata). As compensation for the impact, the applicant proposes to undertake the construction of an educational billboard to be placed on Matagorda County property at the Caney Creek Municipal Utility District Office on FM 457 south of Sargent. CCC Project No.: 05-0412-F1; Type of Application: U.S.A.C.E. permit application #23622 is being evaluated under §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act.

Applicant: Motiva Enterprises, L.L.C.; Location: The proposed project is located at the Motiva Port Arthur Terminal, on Texaco Island, in the Port Arthur Canal/Turning Basin, Jefferson County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Port Arthur South, Texas. Approximate UTM Coordinates in NAD 27 meters: Zone 15; Easting: 407308; Northing: 3300269. Project Description: The applicant proposes to remove the existing No. 2 and No. 4 berths and replace the two berths with a New No. 2 berth. This activity consists of the removal of existing loading platforms, shore approachway/piperacks, mooring structures, access walkways, and gangway structures. The new berth will require some

excavation/dredging to provide a mooring area. There will be 85,000 cubic yards of material excavated/dredged by mechanical means and placed in an upland placement area onsite. The area will be dredged to a depth of -42 feet mean low tide (MLT), tying in to the existing turning basin. The New No. 2 berth will consist of a new loading platform, breasting dolphins, mooring monopiles, walkways, and approachway/piperack structures. There will also be approximately 1,200 linear feet of articulated revetment installed as slope protection of the new berth area. The slope protection will be placed from the +5.0 MLT elevation to the -5.0 MLT elevation. CCC Project No.: 05-0453-F1; Type of Application: U.S.A.C.E. permit application #23886 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: Port Arthur LNG, L.P.; Port Arthur Pipeline, L.P.; Location: The project site is located in waters of the United States, including wetlands, in Orange and Jefferson Counties, Texas, and Cameron, Calcasieu, and Beauregard Parishes, Louisiana. Specifically, the terminal facility is located in and along the Port Arthur Canal, on the west side of Sabine Lake, south of Port Arthur, in Jefferson County, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 407633; Northing: 3295911. A 36-inch, 70-mile-long pipeline will begin at the terminal facility and will terminate at an existing tie-in located in Beauregard Parish, Louisiana. Approximate UTM Coordinates: Zone 15; Easting: 478116; Northing: 3366776. Another 36-inch pipeline will extend from the terminal to an existing pipeline three miles to the south. Approximate UTM Coordinates: Zone 15; Easting: 409402; Northing: 3292264. Project Description: The applicant is proposing to construct and operate a new liquefied natural gas (LNG) import, storage, and vaporization terminal on the Port Arthur Canal, south of Port Arthur, Texas. It also proposes to construct two natural gas send-out pipelines to transport the imported natural gas from the LNG terminal to interconnections with the existing natural gas pipeline infrastructure. A 3-mile long pipeline would be constructed in Jefferson County, Texas. This pipeline would end at Natural Gas Pipeline Company of America's facilities south of the proposed terminal facility. A 70-mile long pipeline would be constructed from the terminal, northeasterly, ending at the Transco pipeline downstream of Transco's Compression Station No. 45, and traversing Jefferson and Orange Counties, Texas, and Cameron, Calcasieu and Beauregard Parishes, Louisiana. In addition, construction of the ship berthing area would necessitate the relocation of 3.3 miles of Texas State Highway 87 as well as existing pipelines and utilities that parallel the highway. The total length of the relocated highway and utility corridor would be 3.7 miles. The project is intended to provide a new, stable source of between 1.5 and 3.0 billion cubic feet per day of natural gas. CCC Project No.: 05-0455-F1; Type of Application: U.S.A.C.E. permit application #23734 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Railroad Commission under §401 of the Clean Water Act.

Applicant: Tempest Energy Resources, L.P.; Location: The project is located in Galveston Bay, approximately 1.2 miles north of San Leon, in Chambers County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Bacliff, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 314654; Northing: 3266345. Project Description: The applicant proposes to install, operate, and maintain structures and equipment necessary for oil and gas drilling, production and transportation activities. Such activities include installation of typical marine barges and keyways, shell and gravel pads, production structures with attendant facilities, and flowlines. The well platform would have a surface area of 9,018 square feet. The production platform would have a surface area of 4,900 square feet. The proposed walkway connection between the two structures would be 100 feet long and 10 feet wide. The proposed shell, gravel, or crushed rock pad will be 240 feet long by 100 feet wide by 3 feet deep, for a total of 2,667 cubic yards of fill. CCC Project No.: 05-0456-F1; Type of Application: U.S.A.C.E. permit application #23906 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Railroad Commission under §401 of the Clean Water Act.

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above may be obtained from Ms. Tammy Brooks, Program Specialist, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or tammy.brooks@glo.state.tx.us. Comments should be sent to Ms. Brooks at the above address or by fax at (512) 475-0680.

TRD-200504185
Larry L. Laine
Chief Clerk/Deputy Land Commissioner, General Land Office
Coastal Coordination Council
Filed: September 20, 2005

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Comptroller of Public Accounts

Local Sales Tax Rate Changes Effective October 1, 2005

The 1 percent local sales and use tax will be abolished, effective September 30, 2005, in the city listed below.

CITY NAME	LOCAL CODE	NEW RATE	TOTAL RATE
Westminster (Collin Co)	2043152	.000000	.062500

A 1/2 percent additional city sales and use tax for Property Tax Relief will become effective October 1, 2005 in the city listed below.

CITY NAME	LOCAL CODE	NEW RATE	TOTAL RATE
Hebron (Denton Co)	2061337	.005000	.067500

*** Note:** The City of Hebron did not have local sales tax prior to this election and will be listed as a new city that is adopting a beginning sales tax rate of 1/2 percent for their property tax relief efforts.

The 1 percent local sales and use tax will become effective October 1, 2005 in the city listed below.

CITY NAME	LOCAL CODE	NEW RATE	TOTAL RATE
Scurry (Kaufman Co)	2129122	.010000	.072500

A 1 1/4 percent local sales and use tax that includes the 1 percent city sales and use tax and an additional 1/4 percent sales and use tax for Municipal Street Maintenance and Repair as permitted under Chapter 327 of the Texas Tax Code will become effective October 1, 2005 in the city listed below.

CITY NAME	LOCAL CODE	NEW RATE	TOTAL RATE
Bedias (Grimes Co)	2093044	.017500	.080000

An additional 1/4 percent city sales and use tax for Municipal Street Maintenance and Repair as permitted under Chapter 327 of the Texas Tax Code will become effective October 1, 2005 in the cities listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Campbell (Hunt Co)	2116092	.017500	.080000
Cottonwood Shores (Burnet Co)	2027054	.012500	.075000
Estelline (Hall Co)	2096023	.012500	.075000
Everman (Tarrant Co)	2220246	.020000	.082500
Little Elm (Denton Co)	2061088	.017500	.080000
Lovelady (Houston Co)	2113040	.017500	.080000
Mart (McLennan Co)	2161078	.017500	.080000

An additional 1/2 percent city sales and use tax for improving and promoting economic and industrial development as permitted under Article 5190.6, Section **4A** will be abolished, effective September 30, 2005, in the city listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Seabrook (Harris Co)	2101197	.020000	.082500

An additional 1/2 percent city sales and use tax for improving and promoting economic and industrial development as permitted under Article 5190.6, Section **4A** will become effective October 1, 2005 in the cities listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Gorman (Eastland Co)	2067037	.020000	.082500
Princeton (Collin Co)	2043081	.020000	.082500

An additional 1/4 percent city sales and use tax for improving and promoting economic and industrial development as permitted under Article 5190.6, Section **4B** will become effective October 1, 2005 in the city listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Progreso (Hidalgo Co)	2108181	.020000	.082500

An additional 1/4 percent sales and use tax for property tax relief will become effective October 1, 2005 in the cities listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Cumby (Hopkins Co)	2112023	.020000	.082500
Selma (Bexar Co)	2015174	.020000	.082500
Selma (Comal Co)	2015174	.020000	.082500
Selma (Guadalupe Co)	2015174	.020000	.082500

An additional 1/2 percent sales and use tax for property tax relief will become effective October 1, 2005 in the city listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Throckmorton (Throckmorton Co)	2224019	.020000	.082500

An additional 1 percent city sales and use tax for improving and promoting economic and industrial development that includes an additional 1/2 percent as permitted under Article 5190.6, Section **4A** plus an additional 1/2 percent as permitted under Article 5190.6, Section **4B** will become effective October 1, 2005 in the cities listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Ferris (Dallas Co)	2070023	.020000	.082500
Ferris (Ellis Co)	2070023	.020000	.082500
Jarrell (Williamson Co)	2246139	.020000	.082500

An additional 1/2 percent city sales and use tax for improving and promoting economic and industrial development as permitted under Article 5190.6, Section **4A** plus an additional 1/4 percent sales and use tax for property tax relief will become effective October 1, 2005 in the city listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Andrews (Andrews Co)	2002017	.017500	.080000

The additional 1/2 percent sales and use tax for improving and promoting economic and industrial development as permitted under Article 5190.6, Section **4B** will be reduced to 1/4 percent and the adoption of an additional 1/4 percent sales and use tax for Municipal Street Maintenance and Repair as permitted under Chapter 327 of the Texas Tax Code will become effective October 1, 2005 in the city listed below. There will be no change in the local rate or total rate.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Frankston (Anderson Co)	2001027	.020000	.082500
Karnes City (Karnes Co)	2128016	.020000	.082500

An additional 1/4 percent city sales and use that includes an additional 1/8 percent city sales and use tax for improving and promoting economic and industrial development as permitted under Article 5190.6, Section **4A** plus an additional 1/8 percent sales and use tax for property tax relief will become effective October 1, 2005 in the city listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Georgetown (Williamson Co)	2246031	.020000	.082500

An additional 1/4 percent sales and use tax for Municipal Street Maintenance and Repair as permitted under Chapter 327 of the Texas Tax Code plus an additional 1/4 percent sales and use tax for property tax relief will become effective October 1, 2005 in the city listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Henrietta (Clay Co)	2039014	.020000	.082500

The additional 1/2 percent sales and use tax for improving and promoting economic and industrial development as permitted under Article 5190.6, .Section **4A** was abolished and the adoption of an additional 1/2 percent sales and use tax for improving and promoting economic and industrial development as permitted under Article 5190.6, Section **4B** will become effective October 1, 2005 in the city listed below. There will be no change in the local rate or total rate.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Athens (Henderson Co)	2107011	.020000	.082500

An additional 1/2 percent sales and use tax for improving and promoting economic and industrial development as permitted under Article 5190.6, Section **4B,** a 1/4 percent sales and use tax for property tax relief, and an additional 1/4 percent sales and use tax for Municipal Street Maintenance and Repair as permitted under Section 327 of the Texas Tax Code will become effective October 1, 2005 in the city listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
White Deer (Carson Co)	2033029	.020000	.082500

The 1/8 percent city sales and use tax for Sports and Community Venue will become effective October 1, 2005 in the city listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
San Antonio (Bexar Co)	2015012	.018750	.081250

An additional 1/2 percent sales and use tax for county property tax relief will become effective October 1, 2005 in the county listed below.

COUNTY NAME	LOCAL CODE	NEW RATE	TOTAL RATE
Lynn	4153005	.005000	SEE NOTE 1

A 1/2 percent special purpose district sales and use tax will become effective October 1, 2005 in the special purpose districts listed below.

SPD NAME	LOCAL CODE	NEW RATE	TOTAL RATE
Crowley Crime Control and Prevention District	5220718	.005000	SEE NOTE 2
Erath County Development District No. 1	5072502	.005000	SEE NOTE 3
Rockwall County Public Safety and Fire Assistance District	5199500	.005000	SEE NOTE 4
Seabrook Crime Control and Prevention District	5101570	.005000	SEE NOTE 5

NOTE 1 The cities of ODonnell, Tahoka and Wilson in Lynn County are currently collecting a 1 percent city sales tax. The total rate in these cities will be 7 3/4 percent. The total rate in the unincorporated areas of Lynn County will be 6 3/4 percent.

NOTE 2 The boundaries of the Crowley Crime Control and Prevention District are the same boundaries as the City of Crowley. The total rate in the City of Crowley will be 8 1/4 percent.

NOTE 3 The Erath County Development District No.1 is located in the southeastern portion of Erath County, which has a county sales and use tax. The unincorporated areas of Erath County in ZIP Codes 76649 and 76690 are partially located within the Erath County Development District No.1. Contact the district representative at 254/918-2503 for additional boundary information.

NOTE 4 The Rockwall County Public Safety and Fire Assistance District is located in Rockwall County. The district includes all unincorporated areas of Rockwall County and the cities of Fate, McLendon Chisholm and Mobile City. Contact the district representative at 972/882-2886 for additional boundary information.

NOTE 5 The boundaries of the Seabrook Crime Control and Prevention District are the same boundaries as the City of Seabrook. The total rate in the City of Seabrook will be 8 1/4 percent.

TRD-200504081
Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
Filed: September 15, 2005

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.009, and 304.003, Tex. Fin. Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 09/26/05 - 10/02/05 is 18% for Consumer [1]/Agricultural/Commercial [2]/credit thru $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 09/26/05 - 10/02/05 is 18% for Commercial over $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 10/01/05 - 10/31/05 is 6.50% for Consumer/Agricultural/Commercial/credit thru $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 10/01/05 - 10/31/05 is 6.50% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment, or other similar purpose.

TRD-200504173
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: September 19, 2005

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Court of Criminal Appeals

Solicitation for Bids

Performance Audit

The Court of Criminal Appeals is accepting bids to conduct a performance audit of non-profit grantee organizations within the Court's Judicial Education Program. The objectives of the audit will include the following: (1) to determine if the organizations are staffed appropriately and staff are adequately paid; (2) to evaluate the organization's activities as to how they benefit the grant program; and (3) to evaluate the efficiency and effectiveness of each organization's grant program. The contract will be awarded to the bidder who best demonstrates the ability to perform a quality analysis based on previous experience. Bids must include references, resumes of those who would perform the work, and a description as to how the work would be conducted to meet the objectives given. Bids must be received no later than Monday, October 31, 2005. Send bids to Mr. Bill Hill, Auditor, Court of Criminal Appeals, Judicial Education, P.O. Box 12308, Capitol Station, Austin, Texas 78711.

TRD-200504190
Louise Pearson
Clerk
Court of Criminal Appeals
Filed: September 20, 2005

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Credit Union Department

Application for a Merger or Consolidation

Notice is given that the following application has been filed with the Credit Union Department and is under consideration:

An application was received from Driscoll Foundation Credit Union (Corpus Christi) seeking approval to merge with Coastal Community and Teachers Credit Union (Corpus Christi) with the latter being the surviving credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-200504202
Harold E. Feeney
Commissioner
Credit Union Department
Filed: September 21, 2005

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Applications to Amend Articles of Incorporation

Notice is given that the following applications have been filed with the Credit Union Department and are under consideration:

An application for a name change was received from Entex South Texas Credit Union, Kenedy, Texas. The credit union is proposing to change its name to South Texas Credit Union.

An application for a name change was received from Gulf Employees Credit Union, Groves, Texas. The credit union is proposing to change its name to Gulf Credit Union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-200504203
Harold E. Feeney
Commissioner
Credit Union Department
Filed: September 21, 2005

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Applications to Expand Field of Membership

Notice is given that the following applications have been filed with the Credit Union Department and are under consideration:

An application was received from First Service Credit Union (#1), Houston, Texas to expand its field of membership. The proposal would permit employees of Oak Leaf Management in Houston, Texas, to be eligible for membership in the credit union.

An application was received from First Service Credit Union (#2), Houston, Texas to expand its field of membership. The proposal would permit employees of RSC Equipment in Houston, Texas, to be eligible for membership in the credit union.

An application was received from Texas Health Resources Credit Union, Dallas, Texas to expand its field of membership. The proposal would permit persons who live, work, worship or attend school within a ten-mile radius of the credit union offices located at 10670 N. Central Expressway, Dallas, TX 75231 and 601 Ryan Plaza, Arlington, TX 76011, to be eligible for membership in the credit union.

An application was received from the Education Credit Union, Amarillo, Texas to expand its field of membership. The proposal would permit employees of educational institutions and organizations, whether public, private or parochial; persons who are receiving retirement, pension or other benefits as a result of prior employment by any educational institution or organization included in field of membership; members of Board of Regents of institutions of higher learning within the geographic boundaries of Dallam, Sherman, Hansford, Ochiltree, Lipscomb, Hartley, Moore, Hutchison, Roberts, Hemphill, Gray, and Deaf Smith counties of Texas, to be eligible for membership in the credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Credit unions that wish to comment on any application must also complete a Notice of Protest form. The form may be obtained by contacting the Department at (512) 837-9236 or

downloading the form at http://www.tcud.state.tx.us/applications.html. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-200504201
Harold E. Feeney
Commissioner
Credit Union Department
Filed: September 21, 2005

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Notice of Final Action Taken

In accordance with the provisions of 7 TAC §91.103, the Credit Union Department provides notice of the final action taken on the following application(s):

Application(s) to Expand Field of Membership - Approved

United Community Credit Union, Houston, Texas - See *Texas Register* issued dated February 25, 2005.

Education Credit Union (The), Amarillo, Texas - See *Texas Register* issue dated June 24 2005.

Application(s) to Amend Articles of Incorporation - Approved

First Community Credit Union, Portland, Texas - See *Texas Register* issue dated July 29, 2005.

TRD-200504204
Harold E. Feeney
Commissioner
Credit Union Department
Filed: September 21, 2005

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Texas Commission on Environmental Quality

Notice of District Petition

Notices mailed September 14, 2005 through September 19, 2005.

TCEQ Internal Control No. 08042005-D04; BGM Land Investments, LTD. (Petitioner) filed a petition for creation of Harris County Municipal Utility District No. 439 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioner is the owner of a majority in value of the land to be included in the proposed District; (2) there is one lien holder, Southern National Bank of Texas, N.A., on the property to be included in the proposed District, and the Petitioner has provided the TCEQ with a certificate evidencing its consent to the creation of the proposed District; (3) the proposed District will contain approximately 314.7 acres located in Harris County, Texas; and (4) the proposed District is within the extraterritorial jurisdiction of the City of Houston, Texas, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. By Ordinance No. 2005-731, effective June 14, 2005, the City of Houston, Texas, gave its consent to the creation of the proposed District. The petition further states that the proposed District will: (1) purchase, construct, acquire, maintain and operate a waterworks and sanitary sewer system for municipal, domestic, industrial and commercial purposes; (2) acquire, construct, operate and maintain a system to gather, conduct, divert, and control local storm water or other local harmful excesses of water within the District; and (3) purchase, acquire, construct, own, lease, extend, improve, operate, maintain, and repair such additional improvements, facilities, plants, equipment, and appliances consistent with the purposes for which the District is organized, all as more particularly described in an engineer's report filed simultaneously with the filing of the petition. According to the petition, the Petitioner has conducted a preliminary investigation to determine the cost of the project, and from the information available at the time, the cost of the project is estimated to be approximately $16,100,000.

TCEQ Internal Control No. 07282005-D01; 523 Venture, LTD. (Petitioner) filed a petition for creation of Harris County Municipal Utility District No. 434 (District) with the TCEQ. The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioner is the owner of a majority in value of the land to be included in the proposed District; (2) there is one lien holder, Hibernia National Bank, on the property to be included in the proposed District, and the Petitioner has provided the TCEQ with a certificate evidencing its consent to the creation of the proposed District; (3) the proposed District will contain approximately 523.997 acres located in Harris County, Texas; and (4) the proposed District is within the extraterritorial jurisdiction of the City of Houston, Texas, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. By Ordinance No. 2005-290, effective March 30, 2005, the City of Houston, Texas, gave its consent to the creation of the proposed District. The petition further states that the proposed District will: (1) purchase, construct, acquire, maintain and operate a waterworks and sanitary sewer system for municipal, domestic, industrial and commercial purposes; (2) acquire, construct, operate and maintain a system to gather, conduct, divert, and control local storm water or other local harmful excesses of water within the District; (3) purchase, acquire, construct, own, lease, extend, improve, operate, maintain, and repair such additional improvements, facilities, plants, equipment, and appliances consistent with the purposes for which the District is organized, all as more particularly described in an engineer's report filed simultaneously with the filing of the petition. According to the petition, the Petitioner has conducted a preliminary investigation to determine the cost of the project, and from the information available at the time, the cost of the project is estimated to be approximately $25,040,000.

TCEQ Internal Control No. 06292005-D03; Mischer Investments, L.P. (Petitioner) filed a petition for creation of Harris County Municipal Utility District No. 433 (District) with the TCEQ. The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioner is the owner of a majority in value of the land to be included in the proposed District; (2) there is no lien holder on the property to be included in the proposed District; (3) the proposed District will contain approximately 485.07 acres located in Harris County, Texas; and (4) the proposed District is within the extraterritorial jurisdiction of the City of Houston, Texas, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. By Ordinance No. 2005-586, effective May 17, 2005, the City of Houston, Texas, gave its consent to the creation of the proposed District. The petition further states that the proposed District

will: (1) purchase, construct, acquire, maintain and operate a waterworks and sanitary sewer system for municipal, domestic, industrial and commercial purposes; (2) acquire, construct, operate and maintain a system to gather, conduct, divert, and control local storm water or other local harmful excesses of water within the District; (3) purchase, acquire, construct, own, lease, extend, improve, operate, maintain, and repair such additional improvements, facilities, plants, equipment, and appliances consistent with the purposes for which the District is organized, all as more particularly described in an engineer's report filed simultaneously with the filing of the petition. According to the petition, the Petitioner has conducted a preliminary investigation to determine the cost of the project, and from the information available at the time, the cost of the project is estimated to be approximately $37,850,000.

TCEQ Internal Control No. 06292005-D06; Mischer Investments, L.P. (Petitioner) filed a petition for creation of Harris County Municipal Utility District No. 435 (District) with the TCEQ. The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioner is the owner of a majority in value of the land to be included in the proposed District; (2) there is no lien holder on the property to be included in the proposed District; (3) the proposed District will contain approximately 312.14 acres located in Harris County, Texas; and (4) the proposed District is within the extraterritorial jurisdiction of the City of Houston, Texas, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. By Ordinance No. 2005-587, effective May 17, 2005, the City of Houston, Texas, gave its consent to the creation of the proposed District. The petition further states that the proposed District will: (1) purchase, construct, acquire, maintain and operate a waterworks and sanitary sewer system for municipal, domestic, industrial and commercial purposes; (2) acquire, construct, operate and maintain a system to gather, conduct, divert, and control local storm water or other local harmful excesses of water within the District; (3) purchase, acquire, construct, own, lease, extend, improve, operate, maintain, and repair such additional improvements, facilities, plants, equipment, and appliances consistent with the purposes for which the District is organized, all as more particularly described in an engineer's report filed simultaneously with the filing of the petition. According to the petition, the Petitioner has conducted a preliminary investigation to determine the cost of the project, and from the information available at the time, the cost of the project is estimated to be approximately $23,800,000.

INFORMATION SECTION

The TCEQ may grant a contested case hearing on a petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed district's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided below.

The Executive Director may approve a petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of the notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court.

Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, the same address. For additional information, individual members of the general public may contact the Office of Public Assistance, at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us.

TRD-200504221
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: September 21, 2005

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Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **October 31, 2005**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate a proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on October 31, 2005**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, comments on the DOs should be submitted to the commission in **writing**.

(1) COMPANY: Kleen Kar Wash of Wichita Falls, Ltd. dba Kleen Kar Wash; DOCKET NUMBER: 2005-0262-PST-E; TCEQ ID NUMBERS: 54207 and RN102473600; LOCATION: 3601 Maplewood Avenue, Wichita Falls, Wichita County, Texas; TYPE OF FACILITY: carwash with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to provide acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases from the operation of petroleum underground storage tanks (USTs); and 30 TAC §334.22(a) and TWC, §5.702, by failing to pay outstanding UST

fees and associated late fees for Financial Assurance Account Number 0028510U for Fiscal Years 2004 and 2005; PENALTY: $3,150; STAFF ATTORNEY: Kathleen Decker, Litigation Division, MC 175, (512) 239-6500; REGIONAL OFFICE: Abilene Regional Office, 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(2) COMPANY: Millenium Gasoline Corporation; DOCKET NUMBER: 2004-1176-PST-E; TCEQ ID NUMBERS: 32129 and RN101556082; LOCATION: 801 East Sherman, Denton, Denton County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases from the operation of petroleum USTs; PENALTY: $4,280; STAFF ATTORNEY: Kathleen Decker, Litigation Division, MC 175, (512) 239-6500; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: Star Tex Distributors, Inc. dba Rice Bird Drive-In; DOCKET NUMBER: 2004-1801-PST-E; TCEQ ID NUMBERS: 39025 and RN102406485; LOCATION: 402 West Jackson Street, El Campo, Wharton County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to provide acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases from the operation of petroleum USTs; and 30 TAC §334.22(a) and TWC, §5.702, by failing to pay outstanding UST fees for TCEQ Account Numbers 0050048U and 0049927U for Fiscal Year 2005; PENALTY: $4,200; STAFF ATTORNEY: Kathleen Decker, Litigation Division, MC 175, (512) 239-6500; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-200504206
Paul C. Sarahan
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: September 21, 2005

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Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **October 31, 2005**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on October 31, 2005**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, §7.075 provides that comments on an AO should be submitted to the commission in **writing**.

(1) COMPANY: Rajeshkumar B. Patel dba Circle Chevron; DOCKET NUMBER: 2004-0632-PST-E; TCEQ ID NUMBERS: 41550 and RN100526813; LOCATION: 2600 LaSalle Avenue, McLennan County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(2)(A)(i)(III) and TWC, §26.3475(a), by failing to conduct annual tightness test for pressurized piping and annual performance test on the line leak detectors; 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and 30 TAC §334.8(c)(5)(C), by failing to ensure that a permanent tag, label, or marking was applied or affixed to the immediate area of the UST fill tube; PENALTY: $6,000; STAFF ATTORNEY: Jeffrey Huhn, Litigation Division, MC 175, (512) 239-5111; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(2) COMPANY: Robert McAdams dba Crossroads Mercantile; DOCKET NUMBER: 2003-1035-PST-E; TCEQ ID NUMBERS: 0029501 and RN102488780; LOCATION: 14758 Farm-to-Market Road 59 South, Athens, Henderson County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate continuous financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the USTs; and 30 TAC §334.22(a), by failing to pay outstanding UST fees for TCEQ Financial Assurance Account Numbers 0055137A and 0055137U, for Fiscal Years 2002 and 2003; PENALTY: $4,050; STAFF ATTORNEY: Kari Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(3) COMPANY: Xena, Inc. dba Runnin Red Food Store; DOCKET NUMBER: 2005-0362-PST-E; TCEQ ID NUMBERS: 7337 and RN102049723; LOCATION: 304 West California Street, Gainesville, Cooke County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.48(c), by failing to conduct inventory control for all USTs involved in the retail sale of petroleum substances used as a motor fuel; 30 TAC §334.8(c)(4)(C) and TWC, §26.346(c)(3), by failing to submit a new UST Registration and Self-Certification Form to the commission within 30 days after tank ownership at the facility changed; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid current TCEQ delivery certificate before receiving a delivery of a regulated substance into the USTs; 30 TAC §334.50(b)(2)(A)(i)(III) and TWC, §26.3475(a), by failing to ensure that the line leak detector was properly maintained in accordance with the manufacturer's specifications and recommended procedures; 30 TAC §334.10(b), by failing to have required UST records, which were maintained readily and accessible, and available for inspection upon request by commission personnel; and 30 TAC §334.7(d)(3), by

failing to provide amended registration for any change or additional information regarding USTs within 30 days from the date of the occurrence of the change or addition; PENALTY: $12,500; STAFF ATTORNEY: Kathleen Decker, Litigation Division, MC 175, (512) 239-6500; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-200504205
Paul C. Sarahan
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: September 21, 2005

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Notice of Public Hearing on Proposed Revisions to 30 TAC Chapter 116 and to the State Implementation Plan

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony regarding proposed amended §§116.12, 116.150, 116.151, 116.160, and 116.610; proposed repealed §§116.180 - 116.183, 116.410, and 116.617; and proposed new §§116.121, 116.180, 116.182, 116.184, 116.186, 116.188, 116.190, 116.192, 116.194, 116.196, 116.198, 116.400, 116.402, 116.404, 116.406, 116.617, and 116.1200 of 30 TAC Chapter 116, Control of Air Pollution by Permits for New Construction or Modification; and corresponding revisions to the state implementation plan (SIP), under the requirements of Texas Health and Safety Code, §382.017; Texas Government Code, Subchapter B, Chapter 2001; and 40 Code of Federal Regulations §51.102, of the United States Environmental Protection Agency regulations concerning SIPs.

The proposed rulemaking would amend Chapter 116 to implement federal new source review reform. The specific areas addressed are plantwide applicability limits, actual to projected actual emission test, emission baseline determination, and the pollution control project standard permit. The proposal would also reorganize portions of Chapter 116 to allow the inclusion of the proposed new sections.

A public hearing for the proposed rulemaking and SIP revision will be held in Austin on October 27, 2005, at 2:00 p.m., in Building B, Room 201A, at the commission's central office, located at 12100 Park 35 Circle. The hearing will be structured for the receipt of oral or written comments by interested persons. Registration will begin 30 minutes prior to the hearing. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes before the hearing and will answer questions before and after the hearing.

Persons planning to attend the hearing who have special communication or other accommodation needs, should contact Joyce Spencer, Office of Legal Services at (512) 239-5017. Requests should be made as far in advance as possible.

Comments may be submitted to Joyce Spencer, MC 205, Texas Register Team, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or by fax to (512) 239-4808. All comments should reference Rule Project Number 2005-010-116-PR. Comments must be received by 5:00 p.m. on October 31, 2005. Copies of the proposed rules can be obtained from the commission's web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html*. For further information, please contact Beecher Cameron, Air Permits Division at (512) 239-1495.

TRD-200504084
Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: September 15, 2005

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Notice of Public Hearing on Proposed Revisions to Chapter 291, Utility Regulations

The Texas Commission on Environmental Quality (TCEQ or commission) will conduct a public hearing to receive comments concerning 30 TAC Chapter 291, Utility Regulations, proposed amendments to §§291.3, 291.5, 291.7, 291.101, 291.102, 291.104 - 291.106, 291.109, 291.113, 291.115, 291.117, and 291.119 and proposed new §291.120 under the requirements of Texas Government Code, Chapter 2001, Subchapter B.

The proposed rulemaking would amend Chapter 291 to implement House Bill (HB) 2876, 79th Legislature, 2005. HB 2876 amended Texas Water Code (TWC), §§13.002, 13.241, 13.242, 13.244, 13.246, 13.247, 13.254, 13.255, and 13.257. HB 2876 also added new §§13.245, 13.2451, and 13.2551 to the TWC and repealed §13.254(h) and §13.2541 from the TWC. The changes to the TWC and amendments to Chapter 291 relate to the criteria for obtaining, amending, transferring, and decertifying certificates of convenience and necessity for water and sewer service. HB 2876 requires the commission to promulgate rules to implement these changes by January 1, 2006.

In addition, this rulemaking would amend the definition of "Affected county" to be consistent with the revision to "affected county" in Senate Bill 425, 79th Legislature.

A public hearing on this proposal will be held in Austin on October 25, 2005, at 10:00 a.m. at the Texas Commission on Environmental Quality complex located at 12100 Park 35 Circle in Building C, Room 131E. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. A time limit may be established at the hearing to assure that enough time is allowed for every interested person to speak. There will be no open discussion during the hearing; however, agency staff members will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact Patricia Durón, Office of Legal Services, at (512) 239-6087. Requests should be made as far in advance as possible.

Comments may be submitted to Patricia Durón, MC 205, Texas Register Team, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Project Number 2005-036-291-PR. Comments must be received by 5:00 p.m., October 31, 2005. Copies of the proposed rules can be obtained from the commission's web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html*. For further information, please contact Michelle Abrams, Water Supply Division, at (512) 239-6014.

TRD-200504102
Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: September 16, 2005

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Notice of Water Quality Applications

The following notices were issued during the period of September 16, 2005 through September 19, 2005.

The following require the applicants to publish notice in the newspaper. The public comment period, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THIS NOTICE.

AMERICAN CHROME & CHEMICALS L.P., which operates a chromium chemicals manufacturing plant, has applied for a renewal of TPDES Permit No. WQ0000349000, which authorizes the discharge of once-through sea water for cooling, utility wastewaters, storm water, and previously monitored effluents (treated sodium dichromate and sodium chromate process wastewater, utility water, recovered groundwater, and storm water runoff via internal Outfall 101; chromic oxide and chromium oxide dihydrate process wastewater, and storm water via internal Outfall 201; and treated sanitary wastewater via internal Outfall 301) at a daily average flow not to exceed 20,000,000 gallons per day via Outfall 001. This application was submitted to the Texas Commission on Environmental Quality on December 7, 2004. The facility is located 0.7 miles north of Interstate Highway 37 on Buddy Lawrence Drive in the extraterritorial jurisdiction of the City of Corpus Christi, Nueces County, Texas.

THE CITY OF BLOSSOM has applied for a renewal of TPDES Permit No. 10715-002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day. The facility is located approximately 3,000 feet southwest of the intersection of U.S. Highway 82 and Farm-to-Market Road 1502, approximately 4,000 feet east of the intersection of Farm-to-Market Roads 194 and 196 in Lamar County, Texas

CITY OF MOUNT VERNON has applied for a renewal of TPDES Permit No. 11122-001, which authorizes the discharge of filter backwash effluent from a water treatment plant at a daily average flow not to exceed 20,000 gallons per day. The facility is located between State Highway 37 and 115, approximately 0.5 mile south of Interstate Highway 30 and below the Mount Vernon Municipal Reservoir Dam in Franklin County, Texas.

CITY OF NEW BOSTON has applied for a renewal of TPDES Permit No. WQ0010482001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,700,000 gallons per day. The facility is located 2,500 feet southeast of the intersection of State Highway 8 and Farm-to-Market Road 1840 and approximately 1.75 miles southeast of the City of New Boston in Bowie County, Texas.

THE CITY OF SONORA has applied for a renewal of TPDES Permit No. 10545-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 876,000 gallons per day. The current permit also authorizes the disposal of treated domestic wastewater via irrigation of 68.3 acres. The facility is located south of Sonora and south of Dry Devils River, approximately 6,000 feet south and 2,000 feet west of the intersection of U.S. Highway 277 and 290 in Sutton County, Texas.

U.S. DEPARTMENT OF HOMELAND SECURITY IMMIGRATION AND CUSTOMS ENFORCEMENT has applied for a renewal of TPDES Permit No. 12321-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 160,000 gallons per day. The facility is located approximately 1,500 feet south of the southeast end of Cameron County Airport Runway, approximately 1.5 miles north and 4 miles east of the intersection of Farm-to-Market Roads 510 and 2480 in Cameron County, Texas.

TRD-200504222
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: September 21, 2005

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Proposed Enforcement Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075, which requires that the commission may not approve these AOs unless the public has been provided an opportunity to submit written comments. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **October 31, 2005**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withhold approval of an AO if a comment discloses facts or considerations that indicate the proposed AO is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code, the Texas Health and Safety Code (THSC), and/or the Texas Clean Air Act (the Act). Additional notice is not required if changes to an AO are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on October 31, 2005**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs should be submitted to the commission in **writing**.

(1) COMPANY: Amil Enterprises Inc. dba Sunny's Mini Mart; DOCKET NUMBER: 2005-0197-PST-E; IDENTIFIER: Petroleum Storage Tank (PST) Facility Identification Number 4998, Regulated Entity Number (RN) 101909828; LOCATION: San Diego, Jim Wells County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to provide acceptable financial assurance; PENALTY: $1,280; ENFORCEMENT COORDINATOR: Howard Willoughby, (361) 825-3100; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(2) COMPANY: Arkema Inc.; DOCKET NUMBER: 2005-0858-AIR-E; IDENTIFIER: RN100209444; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: sulfur products manufacturing; RULE VIOLATED: 30 TAC §101.201(a)(1)(B) and THSC, §382.085(b), by failing to submit notification of an emissions event; and 30 TAC §116.115(c), Permit Number 22100, and THSC, §382.085(b), by failing to obtain regulatory authority or to meet the demonstration requirements of 30 TAC §101.222, for emissions from the plant flare; PENALTY: $1,602; ENFORCEMENT COORDINATOR: Jaime Garza, (956) 425-6010; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(3) COMPANY: Astro Waste, Inc.; DOCKET NUMBER: 2005-0803-MSW-E; IDENTIFIER: RN103158648; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: waste processing; RULE VIOLATED: the Code, §7.101, by failing to comply with the terms and conditions of a commission order, Docket Number 2002-1000-MSW-E; and 30 TAC §330.4(b), by failing to obtain authorization prior to conducting and allowing waste processing activities at the facility; PENALTY: $11,250; ENFORCEMENT COORDINATOR: Sunday Udoetok, (512) 239-0739; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(4) COMPANY: C & R Distributing, Inc.; DOCKET NUMBER: 2005-0103-PST-E; IDENTIFIER: RN102791043; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: gasoline sales; RULE VIOLATED: 30 TAC §334.49(a) and the Code, §26.3475(d), by failing to provide corrosion protection; 30 TAC §334.50(a)(1)(A) and (b)(2)(A)(i) and the Code, §26.3475(a) and (c), by failing to have a release detection method for the diesel product line and by failing to equip the diesel product line with a line leak detector; PENALTY: $6,000; ENFORCEMENT COORDINATOR: Sandy Van Cleave, (512) 239-0667; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(5) COMPANY: ConocoPhillips Company; DOCKET NUMBER: 2005-0163-AIR-E; IDENTIFIER: RN101619179; LOCATION: Old Ocean, Brazoria County, Texas; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: 30 TAC §101.20(3) and §116.115(c), Air Permit Number 5628A, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $16,200; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5800; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(6) COMPANY: Duke Energy Field Services, L.P.; DOCKET NUMBER: 2004-0209-AIR-E; IDENTIFIER: Air Account Numbers WB-0075-S and JC-0067-H, RN102530730 and RN102168705; LOCATION: near Brookeland, Jasper County, Texas; TYPE OF FACILITY: compressor station; RULE VIOLATED: 30 TAC §122.505(a) and (c) and THSC, §382.085(b), by failing to submit a general operating permit application; 30 TAC §§16.615(2), 116.620(b)(2)(B)(i), and 122.514(b)(1), Standard Permit Number 30362, and THSC, §382.085(b), by failing to operate the thermal oxidizer at the required temperature; and 30 TAC §101.201(b)(7) and THSC, §382.085(b), by failing to include all the individually listed components in the final record; PENALTY: $18,900; ENFORCEMENT COORDINATOR: Tel Croston, (512) 239-5717; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(7) COMPANY: City of Early; DOCKET NUMBER: 2005-0903-PWS-E; IDENTIFIER: RN101186039; LOCATION: Early, Brown County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(b)(1) and THSC, §341.0315(c), by exceeding the maximum contaminant level (MCL) for trihalomethanes (TTHM); PENALTY: $655; ENFORCEMENT COORDINATOR: Jill McNew, (915) 655-9479; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(8) COMPANY: Enterprise NGL Pipeline, LLC; DOCKET NUMBER: 2005-0873-AIR-E; IDENTIFIER: RN100210384; LOCATION: Seminole, Gaines County, Texas; TYPE OF FACILITY: pipeline transportation site; RULE VIOLATED: 30 TAC §111.111(a)(4)(A)(ii) and THSC, §382.085(b), by failing to maintain a flare operation log; and 30 TAC §122.145(2) and THSC, §382.085(b), by failing to submit a deviation report and by failing to submit complete deviation reports; PENALTY: $4,080; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 588-5800; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (915) 570-1359.

(9) COMPANY: Exxon Mobil Corporation; DOCKET NUMBER: 2005-0290-AIR-E; IDENTIFIER: Air Account Number HG0229F, RN102574803; LOCATION: Baytown, Harris County, Texas; TYPE OF FACILITY: chemical manufacturing; RULE VIOLATED: 30 TAC §116.115(b) and (c), Permit Numbers 28441, 36476, and PSD-TX-996, and THSC, §382.085(b), by failing to obtain regulatory authority for emissions; 30 TAC §101.211(b)(5), (8), and (9), and THSC, §382.085(b), by failing to identify in the final record of all scheduled maintenance, startup, and shutdown activities with unauthorized emissions, the common name and the agency-established emission point number where the unauthorized emissions were released, by failing to identify in the final record the compound descriptive type of all individually listed components or mixtures of air contaminants, and by failing to identify in the final record the preconstruction authorization, rule citation of the standard permit, permit by rule, or rule governing the facility; and 30 TAC §101.201(b)(8) and THSC, §382.085(b), by failing to identify in the final record of an emissions event the total quantities of emissions, the preconstruction authorization number or rule citation of the standard permit, permit by rule, or rule governing the facility involved in the emission event; PENALTY: $6,930; ENFORCEMENT COORDINATOR: Jaime Garza, (956) 425-6010; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(10) COMPANY: Five Nine Seven Limited dba Ramblewood Mobil Home Park Partnership; DOCKET NUMBER: 2005-0960-MWD-E; IDENTIFIER: Texas Pollutant Discharge Elimination System (TPDES) Permit Number 11038-001, RN101275378; LOCATION: Bryan, Brazos County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 11038-001, and the Code, §26.121(a), by failing to comply with the permitted effluent limitations for dissolved oxygen (DO), total suspended solids (TSS), and flow, and by failing to submit an annual sludge report; PENALTY: $3,360; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(11) COMPANY: Gardner Glass Products, Inc.; DOCKET NUMBER: 2005-0462-IWD-E; IDENTIFIER: TPDES Permit Number 02919, RN100242973; LOCATION: Huntsville, Walker County, Texas; TYPE OF FACILITY: glass products manufacturing; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 02919, and the Code, §26.121(a), by failing to comply with the permitted effluent limitations for total copper and total silver and by failing to submit monitoring results; PENALTY: $17,291; ENFORCEMENT COORDINATOR: Joseph Daley, (512) 239-3308; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(12) COMPANY: City of Grandview; DOCKET NUMBER: 2004-2040-MWD-E; IDENTIFIER: RN101918753; LOCATION: Grandview, Johnson County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 10180001, and the Code, §26.121(a), by failing to comply with the permitted effluent limitations for TSS, total residual chlorine, and carbonaceous biochemical oxygen demand; PENALTY: $7,360; ENFORCEMENT COORDINATOR: Ruben Soto, (512) 239-4571; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(13) COMPANY: Hop's Fuel & Tire Service, Inc. dba Stop N Shop Texaco; DOCKET NUMBER: 2005-1319-PST-E; IDENTIFIER: RN101770865; LOCATION: Groom, Carson County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate

acceptable financial assurance; PENALTY: $1,920; ENFORCEMENT COORDINATOR: Edward Moderow, (512) 239-2680; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(14) COMPANY: City of Houston; DOCKET NUMBER: 2002-0555-MWD-E; IDENTIFIER: Water Quality Permit Numbers 10495-002, 10495-016, 10495-023, and 10495-037, TPDES Permit Numbers 10495-050, 10495-075, 10495-076, 10495-077, 10495-090, 10495-111, and 10495-139, RN101612463, RN101612158, RN101611903, RN101611663, RN101611192, RN101610715, RN101610665, RN101610608, RN100217603, RN101607596, and RN102546199; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), (4), (5), (8), and (9)(A), Water Quality Permit Number 10495-002, and the Code, §26.121(a), by failing to operate and maintain the Sims Bayou wastewater treatment plant (WWTP), by failing to comply with its permitted effluent limits, by failing to comply with the maximum number of allowable discharges per year from the Belmont/Scott wet weather facility, by failing to operate and maintain the Fresh Water Supply District WWTP, Homestead WWTP, Southwest WWTP, Harris County Wastewater Collection Improvement District Number 47, Sagemont WWTP, Northwest WWTP, Northeast WWTP, 69th Street WWTP, Beltway WWTP, and Westway WWTP collection systems, by failing to prevent the unauthorized discharge of wastewater from the grit removal area to a storm drain, by failing to prevent the discharge of algae and sludge from the clarifier weir onto the ground, by failing to prevent the discharge and accumulation of white foam at the outfall, by failing to obtain commission approval before initiating major rehabilitation of the left station, by failing to report unauthorized discharges, by failing to report unauthorized discharges within five working days, and by failing to report an unauthorized discharge from the clean-outs; 30 TAC §319.302(b)(3) and (c), by failing to report unauthorized discharges of greater than 100,000 gallons; 30 TAC §317.3(e)(5), by failing to telemeter the alarm system to a facility where 24-hour attendance is available; 30 TAC §317.7(e) and (h), by failing to provide signage for entry into the dry well and by failing to provide personal gas detectors for entry into the dry well; and 30 TAC §205.6 and §320.214 (now 30 TAC §21.4), and the Code, §5.702, by failing to pay the water quality assessment fee; PENALTY: $969,195; ENFORCEMENT COORDINATOR: Pamela Campbell, (512) 239-4493; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(15) COMPANY: City of Houston; DOCKET NUMBER: 2004-2080-MWD-E; IDENTIFIER: National Pollutant Discharge Elimination System (NPDES) Permit Number TX0062995, RN101611663; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), NPDES Permit Number TX0062995 (now TPDES Permit Number 10495-037), and the Code, §26.121(a), by failing to comply with the permit effluent limits for ammonia-nitrogen and TSS; and 30 TAC §21.4 and §334.128(a) and the Code, §5.702, by failing to pay the aboveground storage tank and consolidated water quality fees; PENALTY: $14,000; ENFORCEMENT COORDINATOR: Pamela Campbell, (512) 239-4493; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(16) COMPANY: KTC Investment, Inc. dba Kamman's Citgo; DOCKET NUMBER: 2004-2083-PST-E; IDENTIFIER: RN101781615; LOCATION: Caney City, Henderson County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $3,150; ENFORCEMENT COORDINATOR: Howard Willoughby, (361) 825-3100; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(17) COMPANY: Lake Conroe Hills Municipal Utility District; DOCKET NUMBER: 2004-1321-MWD-E; IDENTIFIER: TPDES Permit Number WQ0011569001, RN102080256; LOCATION: Willis, Montgomery County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1) and (5), TPDES Permit Number WQ0011569001, and the Code, §26.121(a), by failing to operate and maintain the facility in order to prevent the discharge of solids into the receiving stream and by failing to comply with the permitted effluent limits for biochemical oxygen demand and TSS; PENALTY: $4,270; ENFORCEMENT COORDINATOR: Kimberly Morales, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(18) COMPANY: Sultan M. Mohmand dba M & M Food Mart; DOCKET NUMBER: 2005-0660-PST-E; IDENTIFIER: PST Facility Identification Number 36548, RN101651016; LOCATION: Everman, Tarrant County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $2,280; ENFORCEMENT COORDINATOR: Sunday Udoetok, (512) 239-0739; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(19) COMPANY: City of Mart; DOCKET NUMBER: 2005-1219-PWS-E; IDENTIFIER: RN101388544; LOCATION: Mart, McLennan County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(f)(4) and (5) and THSC, §341.0315(c), by exceeding the maximum contaminant level for total trihalomethanes and haloacetic acids; PENALTY: $1,470; ENFORCEMENT COORDINATOR: Jill McNew, (915) 655-9479; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(20) COMPANY: Michlee Development Corporation; DOCKET NUMBER: 2005-0810-WQ-E; IDENTIFIER: RN104332580; LOCATION: Rendon, Tarrant County, Texas; TYPE OF FACILITY: construction site; RULE VIOLATED: 30 TAC §281.25(a)(4), TPDES General Permit Number TXR15F301, Part III, Section F(2)(a)(ii) and (b)(ii), and (iv), (3)(a), and F(8)(d), by failing to properly install and maintain control measures, by failing to remove off-site sediment accumulations, by failing to maintain records and either attach to or reference dates of major grading activities in the storm water pollution prevention plan, by failing to provide calculations for the basin's storage capacity, and by failing to document major observations and instances of noncompliance on the inspection reports; PENALTY: $1,260; ENFORCEMENT COORDINATOR: Suzanne Walrath, (512) 239-2134; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(21) COMPANY: City of Mount Calm; DOCKET NUMBER: 2003-0076-MWD-E; IDENTIFIER: TPDES Permit Number 11464-001; LOCATION: near Mount Calm, Hill County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 11464-001, and the Code, §26.121(a), by failing to comply with the permit effluent limits and by failing to submit its annual sludge reports; PENALTY: $16,250; ENFORCEMENT COORDINATOR: Pamela Campbell, (512) 239-4493; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(22) COMPANY: Penreco; DOCKET NUMBER: 2005-0928-IWD-E; IDENTIFIER: RN100221282; LOCATION: Dickinson, Galveston County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 00377,

and the Code, §26.121(a), by failing to meet the effluent limitations for five-day biochemical oxygen demand, TSS, and oil and grease; PENALTY: $7,904; ENFORCEMENT COORDINATOR: Brent Hurta, (512) 239-6589; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(23) COMPANY: SK Integrated, Inc. dba Evan's Stop N Go; DOCKET NUMBER: 2005-0616-PST-E; IDENTIFIER: PST Facility Identification Number 6310, RN101557338; LOCATION: Pilot Point, Denton County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to provide acceptable financial assurance; PENALTY: $1,920; ENFORCEMENT COORDINATOR: Howard Willoughby, (361) 825-3100; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(24) COMPANY: T.W.E. Enterprises, Inc.; DOCKET NUMBER: 2005-0915-PWS-E; IDENTIFIER: RN101244754; LOCATION: Van Vleck, Matagorda County, Texas; TYPE OF FACILITY: public water system; RULE VIOLATED: 30 TAC §290.109(c)(2) and (g), §290.122(c), and THSC, §341.033(d), by failing to collect and submit routine monthly water samples for bacteriological analysis and by failing to provide public notice; PENALTY: $1,120; ENFORCEMENT COORDINATOR: Kimberly Morales, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(25) COMPANY: City of Wills Point; DOCKET NUMBER: 2005-1179-PWS-E; IDENTIFIER: RN101388973; LOCATION: Wills Point, Van Zandt County, Texas; TYPE OF FACILITY: public water system; RULE VIOLATED: 30 TAC §290.113(f)(4) and (5) and THSC, §341.0315(c), by exceeding the MCL for TTHM and haloacetic acids; PENALTY: $1,310; ENFORCEMENT COORDINATOR: Craig Fleming, (512) 239-5806; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(26) COMPANY: Woodmere Development Company, Ltd.; DOCKET NUMBER: 2005-1028-AIR-E; IDENTIFIER: RN104468111; LOCATION: Houston, Montgomery County, Texas; TYPE OF FACILITY: residential subdivision construction site; RULE VIOLATED: 30 TAC §101.4 and §111.201 and THSC, §382.085(b), by failing to prevent nuisance conditions caused by soot and ash from unauthorized outdoor burning; and 30 TAC §205.6 and the Code, §5.702, by failing to pay general permit storm water fees and associated late fees; PENALTY: $1,600; ENFORCEMENT COORDINATOR: Kimberly Morales, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(27) COMPANY: City of Zavalla; DOCKET NUMBER: 2005-0672-MWD-E; IDENTIFIER: TPDES Permit Number 13871001, RN100530583; LOCATION: Zavalla, Angelina County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1) and (17), TPDES Permit Number 13871001, and the Code, §26.121(a), by failing to comply with permit effluent limitations for TSS, DO, pH, flow, and five-day biochemical oxygen demand and by failing to provide monitoring results; PENALTY: $7,248; ENFORCEMENT COORDINATOR: Merrilee Hupp, (512) 239-4490; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

TRD-200504200
Paul C. Sarahan
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: September 21, 2005

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Texas Health and Human Services Commission

Notice of Intent to Amend Consulting Contract

The Health and Human Services Commission (HHSC) currently contracts with MTG Management Consultants, L.L.C. (MTG) to provide project management and related services in the Front-End Authentication and Fraud Prevention System Pilot Project. This project seeks to (1) reduce the number of Medicaid fraud cases arising from authentication fraud and abuse; (2) reduce the total amount of Medicaid expenditures by generating substantial, measurable, and sustainable cost saving for taxpayers; (3) reduce the number of fraudulent participants in the Medicaid Program; and (4) comply with the requirements of House Bill 2292 relating to the implementation of this Pilot Project.

Under the terms of the contract, MTG has acted as HHSC's Project Management Vendor for this Pilot Project.

The term of the original contract between HHSC and MTG commenced on November 3, 2003, and extends through November 30, 2005.

As required by the provisions of Texas Government Code, Chapter 2254, prior to amending its contract with MTG, HHSC extends this invitation to qualified and experienced consultants interested in providing the consulting services described in this notice. Unless a better offer (as determined by HHSC) is received from another vendor in response to this notice, HHSC intends to enter into negotiations with MTG to amend its consulting services contract, and to extend the term through November 30, 2006.

Scope of Work/Offer Specifications:

MTG acts as HHSC's Project Management Vendor for the Front-End Authentication and Fraud Prevention System Pilot Project, which utilizes biometric identification technology to verify Medicaid recipients' identities.

As the Project Management Vendor for the Pilot Project, MTG provides continuous project management and oversight of the Pilot Program, including operational, quality assistance (QA) and general support. MTG provides oversight of Pilot Project Vendors' performance and progress towards project milestones and it coordinates, collects and transmits Pilot Vendor data.

The contract amendment reflects a proposed 12-month mandatory pilot in three counties and will include the following scope of work:

• Support the project management and pre-planning for a mandatory MIP pilot

• Support the project management of the mandatory pilot implementation

• Support the project management of the mandatory pilot operations

• Support Extended Pilot Turnover project management

• Provide a project plan detailing the 12-month pilot extension activities

In providing the Services and Deliverables, the contractor must ensure compliance with state and federal laws, rules and regulations governing the applicable programs.

Specifications:

Any consultant submitting an offer in response to this notice must provide the following:

(1) Consultant's legal name, including type of entity (individual, partnership, corporation, etc.), and address;

(2) Background information regarding the consultant, including the number of years in business and the number of employees;

(3) Information regarding the qualifications, education, and experience of the team members proposed to conduct the requested services;

(4) The hourly rate to be charged for each team member providing services;

(5) The earliest date by which the consultant could begin providing the services;

(6) A list of five client references, including any State Medicaid Programs for which consultant has provided consulting services;

(7) A statement of consultant's approach to the project (i.e., the services described in the Scope of Work section of this notice), any unique benefits consultant offers HHSC, and any other information consultant desires HHSC to consider in connection with consultant's offer;

(8) Information to assist HHSC in assessing consultant's demonstrated competence and experience providing consulting services similar to the services requested in this notice;

(9) Information to assist HHSC in assessing the consultant's knowledge and/or capabilities of developing independent feasibility and cost-benefit studies, Texas Medicaid programs, smart card and biometric technologies associated with deterring fraud, and specific issues related to the Front-End Authentication and Fraud Prevention System Pilot;

(10) The following required forms, which are located on its website at http://www.hhsc.state.tx.us/about_hhsc/Contracting/rfp_attch/attach.html

(a) Child Support Certification;

(b) Debarment, Suspension, Ineligibility and Voluntary Exclusion for Covered Contracts;

(c) Federal Lobbying Certification;

(d) Nondisclosure Statement;

(e) Proposer Information; and

(f) HUB Subcontracting Plan Forms (Pre-Award). To search for potential HUB vendors who may perform subcontracting opportunities, respondents may refer to the Texas Building and Procurement Commission's Centralized Master Bidders List HUB Directory, which is found at http://www.tbpc.state.tx.us/cmbl/cmblhub.html. Class and item codes for potential subcontracting opportunities under this notice, include, but are not limited to: Class 918 -- "Consulting Services;" Item 06 - "Administrative Consulting," Items 28-29 - "Computer Hardware and Software Consulting," and Item 58 -- "Governmental Consulting."

Failure to submit the required forms will result in HHSC's disqualification of the offer.

(11) Information to assist HHSC in assessing whether the consultant will have any conflicts of interest in performing the requested services.

Parties interested in reviewing the Scope of Work or submitting a competing offer should contact HHSC's sole point of contact regarding this notice, Ms. Anna Gomez, Health and Human Services Commission, 909 West 45th Street, Austin, Texas 78751, anna.gomez@hhsc.state.tx.us.

Finding of Fact: HHSC has submitted a request to the Governor's Office of Budget, Planning, and Policy for a finding of fact that the requested consulting services are necessary. Execution of a contract or an amendment to the current contract is contingent upon receipt of such a finding.

Criteria for Selection: HHSC intends to negotiate an amendment to its contract with MTG unless it receives a better offer for the desired services. HHSC will make its selection based on demonstrated competence, knowledge and qualifications, considering the reasonableness of the proposed fees for services.

How To Respond; Submittal Deadline: All offers must be received no later than 5:00 pm, Central Time, on October 21, 2005. Submissions received after the deadline will not be considered. Offers must be submitted to HHSC's sole point of contact listed above.

Questions: Questions concerning this invitation and all offers in response to this notice should be submitted in writing or by email and directed to HHSC's sole point of contact listed above.

HHSC reserves the right to accept or reject any or all proposals submitted. HHSC is under no legal or other obligation to execute any contracts on the basis of this notice. HHSC will not pay for any costs incurred by any entity in responding to this notice.

TRD-200504226
Martin Zelinsky
Assistant General Counsel
Texas Health and Human Services Commission
Filed: September 21, 2005

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Notice of Intent to Amend Consulting Contract

The Health and Human Services Commission (HHSC) currently contracts with International Biometric Group (IBG) to provide independent evaluation and related services in the Front-End Authentication and Fraud Prevention System Pilot Project. This project seeks to (1) reduce the number of Medicaid fraud cases arising from authentication fraud and abuse; (2) reduce the total amount of Medicaid expenditures by generating substantial, measurable, and sustainable cost saving for taxpayers; (3) reduce the number of fraudulent participants in the Medicaid Program; and (4) comply with the requirements of House Bill 2292 relating to the implementation of this Pilot Project. Under the terms of the contract, IBG has acted as HHSC's Independent Evaluation Vendor for this Pilot Project.

The term of the original contract between HHSC and IBG commenced on January 27, 2004, and extends through November 30, 2005.

As required by the provisions of Texas Government Code, Chapter 2254, prior to amending its contract with IBG, HHSC extends this invitation to qualified and experienced consultants interested in providing the consulting services described in this notice. Unless a better offer (as determined by HHSC) is received from another vendor in response to this notice, HHSC intends to enter into negotiations with IBG to amend its consulting services contract, and to extend the term through November 30, 2006.

Scope of Work/Offer Specifications:

IBG acts as HHSC's Independent Evaluation Vendor for the Front-End Authentication and Fraud Prevention System Pilot Project, which utilizes biometric identification technology to verify Medicaid recipients' identities.

As the Independent Evaluation Vendor for the Pilot Project, IBG (1) provides continuous evaluation and verification of operations and performance of the selected Pilot Project Vendors' solutions; (2) analyzes, evaluates, and provides routine reporting on Pilot Project activities and performance; (3) IBG alerts appropriate HHSC staff on any issues, deviations or potential problems with the Pilot Project; and (4) provides recommendations for corrective actions.

The contract amendment reflects a proposed 12-month mandatory pilot in three counties and will include the following scope of work:

• Provide project plan detailing the 12-month pilot extension activities

• Provide comparison from the voluntary pilot findings and the mandatory pilot findings

• Assess the client acceptance of the pilot

• Analyze the number of clients who left the Medicaid program during the pilot and assess why the clients left Medicaid program

• Evaluate the provider acceptance of the pilot

• Develop and write a report on the provider and client acceptance

• Provide a review of the fraud analysis

In providing the Services and Deliverables, the contractor must ensure compliance with state and federal laws, rules and regulations governing the applicable programs.

Specifications:

Any consultant submitting an offer in response to this notice must provide the following:

(1) Consultant's legal name, including type of entity (individual, partnership, corporation, etc.), and address;

(2) Background information regarding the consultant, including the number of years in business and the number of employees;

(3) Information regarding the qualifications, education, and experience of the team members proposed to conduct the requested services;

(4) The hourly rate to be charged for each team member providing services;

(5) The earliest date by which the consultant could begin providing the services;

(6) A list of five client references, including any State Medicaid Programs for which consultant has provided consulting services;

(7) A statement of consultant's approach to the project (i.e., the services described in the Scope of Work section of this notice), any unique benefits consultant offers HHSC, and any other information consultant desires HHSC to consider in connection with consultant's offer;

(8) Information to assist HHSC in assessing consultant's demonstrated competence and experience providing consulting services similar to the services requested in this notice;

(9) Information to assist HHSC in assessing the consultant's knowledge and/or capabilities of independent evaluation of Texas Medicaid programs, smart card and biometric technologies associated with deterring fraud, and specific issues related to the Front-End Authentication and Fraud Prevention System Pilot;

(10) The following required forms, which are located on its website at http://www.hhsc.state.tx.us/about_hhsc/Contracting/rfp_attch/attach.html

(a) Child Support Certification;

(b) Debarment, Suspension, Ineligibility and Voluntary Exclusion for Covered Contracts;

(c) Federal Lobbying Certification;

(d) Nondisclosure Statement;

(e) Proposer Information; and

(f) HUB Subcontracting Plan Forms (Pre-Award).

To search for potential HUB vendors who may perform subcontracting opportunities, respondents may refer to the Texas Building and Procurement Commission's Centralized Master Bidders List HUB Directory, which is found at http://www.tbpc.state.tx.us/cmbl/cmblhub.html. Class and item codes for potential subcontracting opportunities under this notice, include, but are not limited to: Class 918 -- "Consulting Services;" Item 06 - "Administrative Consulting," Items 28-29 - "Computer Hardware and Software Consulting," and Item 58 -- "Governmental Consulting."

Failure to submit the required forms will result in HHSC's disqualification of the offer.

(11) Information to assist HHSC in assessing whether the consultant will have any conflicts of interest in performing the requested services.

Parties interested in reviewing the Scope of Work or submitting a competing offer should contact HHSC's sole point of contact regarding this notice, Ms. Anna Gomez, Health and Human Services Commission, 909 West 45th Street, Austin, Texas 78751, anna.gomez@hhsc.state.tx.us.

Finding of Fact: HHSC has submitted a request to the Governor's Office of Budget, Planning, and Policy for a finding of fact that the requested consulting services are necessary. Execution of a contract or an amendment to the current contract is contingent upon receipt of such a finding.

Criteria for Selection: HHSC intends to negotiate an amendment to its contract with IBG unless it receives a better offer for the desired services. HHSC will make its selection based on demonstrated competence, knowledge, and qualifications, considering the reasonableness of the proposed fees for services.

How To Respond; Submittal Deadline: All offers must be received no later than 5:00 pm, Central Time, on October 21, 2005. Submissions received after the deadline will not be considered. Offers must be submitted to HHSC's sole point of contact listed above.

Questions:

Questions concerning this invitation and all offers in response to this notice should be submitted in writing or by email and directed to HHSC's sole point of contact listed above.

HHSC reserves the right to accept or reject any or all proposals submitted. HHSC is under no legal or other obligation to execute any contracts on the basis of this notice. HHSC will not pay for any costs incurred by any entity in responding to this notice.

TRD-200504227
Martin Zelinsky
Assistant General Counsel
Texas Health and Human Services Commission
Filed: September 21, 2005

Notice of Intent to Renew Consultant Contract

In compliance with the provisions of Chapter 2254, Subchapter B, Texas Government Code, the Health and Human Services Commission (HHSC) and the Comptroller of Public Accounts (Comptroller) furnish this notice of intent to renew a consultant contract.

HHSC and the Comptroller issued their Request for Proposals (RFP) from qualified consultants to assist HHSC and Comptroller in reviewing programs administered by various state agencies in order to maximize their receipt of federal revenue. The original notice of request for proposals (RFP #02-184) was published at 27 TexReg 1373.

The contract was awarded to Public Consulting Group, Inc., 148 State Street, Boston, Massachusetts 02109. The term of the contract, as previously extended, is July 22, 2002 through October 31, 2005. The original contract included options to extend the contract through August 31, 2006.

HHSC and the Comptroller intend to extend the contract through August 31, 2006, unless they receive a better offer for the desired services. Current efforts that will be continued in this contract extension period include assistance with analysis and implementation of projects in areas such as, rate setting, reimbursement for senior vaccinations, state lab services, blood lead services, and Medicaid claims and billings review. The contract is paid on a contingent fee basis: the fee is calculated based on the receipt of additional federal financial participation dollars into the state treasury.

A Scope of Work statement and instructions for submitting an offer have been posted to the HHSC website. Please refer to the HHSC website posting for additional information. The address for the HHSC website is http://www.hhsc.state.tx.us/about_hhsc/BusOpp/BO_opportunities.html. Parties interested in reviewing the Scope of Work or submitting a competing offer should contact Mary Dingrando, Health and Human Services Commission, 4900 North Lamar, Room 7302, Austin Texas 78751, fax (512) 424-6669, email mary.dingrando@hhsc.state.tx.us. To be considered, all competing offers must be received at the foregoing address on or before 4:00 p.m. Central Time on October 21, 2005. Offers received after this time and date will not be considered. Determination of best offer will be made based on demonstrated competence, knowledge and qualifications, considering the reasonableness of the proposed fees for services.

Exercise of this option to extend is contingent upon receipt of a finding of fact from the Governor's Office of Budget and Planning that the requested consulting services are necessary. All questions regarding this notice must be sent in writing to Ms. Dingrando at the address stated above by 4:00 p.m. Central Time on October 10, 2005.

TRD-200504224
David Brown
Assistant General Counsel
Texas Health and Human Services Commission
Filed: September 21, 2005

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Department of State Health Services

Licensing Actions for Radioactive Materials

The Department of State Health Services has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
El Paso	Center for Cancer Medicine DBA Center for Cancer Medicine and Blood Disorders	L05880	El Paso	00	08/31/05
El Paso	El Paso Heart and Vascular Clinic PA	L05927	El Paso	00	08/31/05
Omaha	Hodges & Son Construction Co Inc	L05910	Omaha	00	08/31/05
San Antonio	Radiation Oncology of San Antonio PA DBA Baptist Cancer Center	L05853	San Antonio	00	09/08/05
Throughout Tx	DFW Group Inc	L05928	Arlington	00	09/14/05
Throughout Tx	Archana Inc	L05931	El Paso	00	09/13/05
Throughout Tx	Mestena Uranium LLC	L05939	Encino	00	09/08/05
Throughout Tx	United States Environmental Services LLC	L05801	La Porte	00	08/31/05

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Austin	Daughters of Charity Health Services of Austin DBA Brackenridge Hospital	L00268	Austin	86	09/13/05
Austin	HTI/ADC Venture DBA North Austin Medical Ctr	L04910	Austin	51	09/08/05
Austin	Austin Nuclear Pharmacy Inc	L05591	Austin	04	08/30/05
Baytown	Lanxess Corporation	L05810	Baytown	01	09/09/05
Bedford	Texas Oncology PA DBA Edwards Cancer Center	L05550	Bedford	08	09/07/05
Bedford	Harris Methodist Hospital – HEB	L02303	Bedford	30	08/30/05
College Station	College Station Hospital LP DBA College Station Medical Center	L02559	College Station	58	09/12/05
Crowley	National Inspection Services LLC	L05930	Crowley	01	09/01/05
Dallas	Baylor Radiosurgery Center DBA Baylor University Medical Center	L05842	Dallas	01	08/31/05
Edinburg	Doctors Hospital at Renaissance LTD DBA Doctors Hospital at Renaissance	L05761	Edinburg	07	09/12/05
El Paso	Providence Memorial Hospital	L02353	El Paso	83	09/12/05
Fort Worth	Bell Helicopter Textron Inc	L05929	Fort Worth	01	08/31/05
Garland	Baylor Medical Center at Garland	L01565	Garland	35	09/02/05
Georgetown	Georgetown Healthcare System	L03152	Georgetown	34	08/30/05
Henrietta	Clay County Memorial Hospital	L03228	Henrietta	19	09/06/05
Houston	Memorial Hermann Hospital System DBA Memorial Hospital Memorial City	L01168	Houston	85	09/14/05
Houston	Texas Childrens Hospital	L04612	Houston	35	09/13/05
Houston	University of Texas MD Anderson Cancer Center	L00466	Houston	98	09/14/05

CONTINUED AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Houston	Digirad Imaging Solutions Inc	L05414	Houston	25	09/07/05
Houston	Memorial Hermann Hospital System DBA Memorial Hospital Southwest	L00439	Houston	103	09/08/05
Houston	Memorial Hermann Hospital System DBA Memorial Hospital Memorial City	L01168	Houston	84	09/08/05
Houston	Park Plaza Hospital	L03612	Houston	07	09/01/05
Houston	Houston Cyclotron Partners LP DBA Cyclotope	L05585	Houston	05	09/06/05
Houston	Tanox Inc	L04094	Houston	11	09/07/05
Houston	Encysive Pharmaceuticals Inc	L04568	Houston	14	09/06/05
Jacksonville	Regional Health Care Center DBA Mother Frances Hospital-Jacksonville	L05362	Jacksonville	21	09/01/05
La Grange	St Marks Medical Center	L03572	La Grange	20	09/07/05
La Porte	J V Industrial Co LTD	L05785	La Porte	02	09/13/05
Lewisville	Columbia Medical Center of Lewisville Subsidiary LP DBA Medical Center of Lewisville	L02739	Lewisville	47	09/08/05
Nacogdoches	Memorial Hospital	L01071	Nacogdoches	37	09/02/05
Odessa	Odessa Regional Hospital LP DBA Odessa Regional Hospital	L04885	Odessa	07	09/12/05
Pasadena	Conam Inspection & Engineering Inc	L05010	Pasadena	97	09/08/05
Plano	Columbia Medical Ctr of Plano Subsidiary LP DBA Medical Center of Plano	L02032	Plano	76	09/13/05
San Angelo	West Texas Medical Associates	L05849	San Angelo	01	08/31/05
San Antonio	VHS San Antonio Partners LP DBA Baptist Health System	L00455	San Antonio	145	09/13/05
San Antonio	South Texas Radiology Imaging Centers	L00325	San Antonio	138	08/31/05
Temple	Scott and White Memorial Hospital and Scott Sherwood and Brindley Foundation DBA Scott and White Memorial Hospital	L00331	Temple	74	09/13/05
Temple	Texas A&M University System Health Science Center	L05494	Temple	06	09/08/05
Throughout Tx	MPM Products Inc	L00967	Arlington	36	08/30/05
Throughout Tx	Fugro Consultants LP	L03875	Austin	19	09/14/05
Throughout Tx	ConocoPhillips Company DBA Borger Refinery and NGL Center	L02480	Borger	43	09/09/05
Throughout Tx	H & G Inspection Company Inc ADBA Statewide Maintenance Company	L02181	Houston	202	09/12/05
Throughout Tx	IRISNDT Inc	L04769	Houston	18	09/02/05
Throughout Tx	Desert Industrial X-ray LP	L04590	Odessa	42	09/07/05
Throughout Tx	T C Inspection Inc	L05833	Oyster Creek	06	09/02/05
Throughout Tx	Industrial Resolution Imaging Services Inc DBA Scanmasters	L05730	Pearland	03	09/07/05
Throughout Tx	All American Inspection Inc	L01336	San Antonio	53	09/09/05
Throughout Tx	APEX Geoscience Inc	L04929	Tyler	21	09/13/05
Throughout Tx	Nutech Inc	L04274	Tyler	51	09/14/05
Tyler	Tyler Pet Imaging Institute LP	L05476	Tyler	05	09/01/05
Tyler	East Texas Medical Center	L00977	Tyler	123	09/06/05
Waxahachie	Baylor Medical Center at Waxahachie	L04536	Waxahachie	25	09/02/05

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amend -ment #	Date of Action
Abilene	Hendrick Medical Center	L02433	Abilene	87	09/06/05
Dallas	Tenet Health System Hospitals Dallas Inc DBA RHD Memorial Medical Center	L02314	Dallas	50	08/30/05
Houston	Ben Taub General Hospital Nuclear Medicine	L01303	Houston	57	09/13/05
Pasadena	AES Deepwater Inc	L03746	Pasadena	14	09/12/05
Throughout Tx	E D Baker Company LTD	L04872	Borger	06	09/09/05
Throughout Tx	CME Testing and Engineering Inc	L05263	College Station	05	09/08/05
Throughout Tx	Paradigm Consultants Inc	L04875	Houston	04	09/13/05
Waco	Providence Health Center	L01638	Waco	49	09/01/05

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Austin	Central Texas Oncology Associates PA DBA Pet Center of Central Texas	L05429	Austin	03	09/02/05
Throughout Tx	SPEC Technical	L05613	Fort Worth	02	09/01/05
Throughout Tx	Jose Luis Hernandez DBA Gamma Tech Industrial X-ray Service	L05183	Laredo	07	09/14/05

LICENSE EXEMPTION ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Houston	Houston Medical Imaging	L05184	Houston		08/31/05

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of Title 25 Texas Administrative Code (TAC), Chapter 289 regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC, Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC, Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756-3189. For information call (512) 834-6688.

TRD-200504193
Lisa Hernandez
Deputy General Counsel
Department of State Health Services
Filed: September 20, 2005

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Notice of Revocation of Certificates of Registration

The Department of State Health Services, having duly filed complaints pursuant to 25 Texas Administrative Code, §289.205, has revoked the following certificates of registration: William Rowan Patterson, Jr., D.D.S., Texarkana, R00904, September 9, 2005; Garland Veterinary Hospital, Garland, R01527, September 9, 2005; Laurence Melton, D.D.S., Dallas, R05077, September 9, 2005; Elliott Chiropractic Clinic, Liberty, R13940, September 9, 2005; Maddox Chiropractic Clinic, Austin, R16251, September 9, 2005; MedExchange, Inc., Dallas, R17291, September 9, 2005; Healthcomp Evaluation Services Corp., Arlington Heights, Illinois, R18833, September 9, 2005; Larin B. Perkins, D.C., P.C., Houston, R18991, September 9, 2005; George Franklin, D.D.S., P.C., McAllen, R23955, September 9, 2005; Puhl Chiropractic Clinic, San Antonio, R25357, September 9, 2005; Sara L. Halsell, D.C., Arlington, R26327, September 9, 2005; The Austin Clinic, LP, Austin, R26922, September 9, 2005; Leonard Dental Service, Euless, R27355, September 9, 2005.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200504192

Lisa Hernandez
Deputy General Counsel
Department of State Health Services
Filed: September 20, 2005

♦ ♦ ♦

Texas Department of Housing and Community Affairs

Notice of Funding Availability (NOFA)

Texas Bootstrap Loan Program FY 2006 and 2007

The Texas Department of Housing and Community Affairs (TDHCA/the Department), through its Office of Colonia Initiatives (OCI), is pleased to announce that it will make available approximately Six Million Dollars ($6,000,000) utilizing State of Texas Housing Trust Fund to purchase or refinance real property on which to build new residential housing or improve existing residential housing through self-help construction for low, very low, and extremely low income individuals and families (Owner-Builders); including persons with special needs.

The OCI administers the Texas Bootstrap Loan Program (the Program) by working through certified Nonprofit Owner-Builder Housing Organizations.

In an effort to encourage the production of affordable housing for individuals and families of Extremely Low Income, TDHCA is meeting its goal of directing the funds in accordance with §2306.753(d) of the Texas Government Code. The maximum amount of funding per organization is $600,000. The maximum loan amount using TDHCA funds may not exceed $30,000 per household. The total amount of loans made with TDHCA and any other source combined may not exceed $60,000 per household. TDHCA, may, at its discretion, award funds above the maximum $600,000 award limit to eligible organizations that have in the past demonstrated successful implementation of this initiative. Projects utilizing additional non-TDHCA resources will be required to provide documentation identifying the sources of these additional funds and information about their interest rates and terms.

Eligibility requirements establish a priority for loans made to Owner-Builders, as set out in §2306.753, Texas Government Code, with an annual income of less than $17,500.

To be eligible for a loan, an Owner-Builder:

(1) may not have an annual income that exceeds 60 percent, as determined by TDHCA, of the greater of the state or local Area Median Family Income (AMFI), when combined with the income of any person who resides with the Owner-Builder;

(2) must have resided in this state for the preceding six months;

(3) must have successfully completed an owner-builder education class; and

(4) must agree to:

(A) provide at least 60 percent of the labor necessary to build or rehabilitate the proposed housing by working through a certified Nonprofit Owner-Builder Housing Organizations; or

(B) provide an amount of labor equivalent to the amount required in connection with building or rehabilitating housing for others through a certified Nonprofit Owner-Builder Housing Organization;

(C) TDHCA may select Nonprofit Owner-Builder Housing Organizations to certify the eligibility of Owner-Builders to receive a loan. A certified Owner-Builder Nonprofit Housing Organization selected by TDHCA shall use the eligibility requirements established by TDHCA to certify the eligibility of an Owner-Builder for this program.

Eligible applicants include Colonia Self-Help Centers and State Certified Nonprofit Owner-Builder Housing Organizations. In accordance with §2306.753(d) of the Texas Government Code:

(1) qualify potential owner-builders for loans under this subchapter;

(2) provide owner-builder education classes;

(3) assist owner-builders in building housing; and

(4) administer loans made by the department under this subchapter.

In accordance with Section §2306.753(d) of the Texas Government code, as amended, TDHCA shall set aside at least two-thirds of the available funds for Owner-Builders whose property is located in an Economically Distressed Area Program (EDAP) counties, as defined under Subchapter K, Chapter 17, Water Code

Bee

Brewster

Brooks

Cameron

Culberson

Dimmit

Duval

El Paso

Frio

Hidalgo

Jeff Davis

Jim Wells

Kinney

La Salle

Liberty

Marion

Matagorda

Maverick

Newton

Nueces

Presidio

Red River

Reeves

Sabine

San Patricio

Starr

Terrell

Tyler

Uvalde

Val Verde

Ward

Webb

Willacy

Winkler

Zapata

Zavala

The remainder of the funding will be available to TDHCA certified Nonprofit Owner-Builder Housing Organizations in the State of Texas. The amounts available for distribution are as follows.

For Fiscal Year 2006 (September 1, 2005)

$1,000,000 State of Texas

$2,000,000 Economically Distressed Areas (EDA)

For Fiscal Year 2007 (September 1, 2006)

$1,000,000 State of Texas

$2,000,000 Economically Distressed Areas (EDA)

Applicants who have received a Texas Bootstrap Loan Program award in the past must have expended and/or have under construction 50% of their previous award to be considered under this NOFA as of November 18, 2005.

General Information for NOFA:

Applications meeting threshold criteria will be evaluated and scored within categories, including but not limited to Operational Capacity and Experience, Financial Design, Quality of Program Design, Leveraging of Public and Private Resources, and Underserved Areas and Population. Applications will then be selected based on program scoring criteria (which is included in the application package), underwriting criteria, and geographic dispersion. TDHCA desires to select a diverse group of certified owner-builder nonprofit housing organizations that will serve various populations throughout the state.

Applicants for this program are encouraged to download the FY 2006 and 2007 Texas Bootstrap Loan Program application package from TDHCA's web-site located at http://www.tdhca.state.tx.us/htf.htm. Applicants may also request a hard copy version of the application package. Application packages will be transmitted via first class U.S. Postal Service unless applicants request transmittal via overnight courier and provide the name and account number of their desired courier.

TDHCA's Board of Directors reserves the right to change the award amount, and to award less than the requested amount.

Applications must be submitted on or before 5:00 p.m., Friday, November 18, 2005.

FAXED APPLICATIONS WILL NOT BE ACCEPTED.

All interested parties are encouraged to participate in this program. Applications will be available on September 30, 2005. Technical Assistance for this application will be provided during September 30 - November 18, 2005. For additional information, time and date of workshops, or to request an application package, please call Raul Gonzales with the Office of Colonia Initiatives at (800) 462-4251, check TDHCA's web-site at www.tdhca.state.tx.us or e-mail your request to raul.gonzales@tdhca.state.tx.us. Please direct your applications to:

Texas Department of Housing and Community Affairs

ATTN: Office of Colonia Initiatives

Post Office Box 13941

Austin, Texas 78711-3941

Or by courier to:

507 Sabine, Suite 400

Austin, Texas 78701

TRD-200504223
Edwina Carrington
Executive Director
Texas Department of Housing and Community Affairs
Filed: September 21, 2005

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Notice of Public Hearing

Multifamily Housing Revenue Bonds (Willow Creek Apartments) Series 2005

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Issuer") at Tomball Intermediate School, 723 West Main Street, Tomball, Texas 77375, at 6:00 p.m. on October 17, 2005 with respect to an issue of tax-exempt multifamily residential rental development revenue bonds in an aggregate principal amount not to exceed $14,600,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series (the "Bonds"), by the Issuer. The proceeds of the Bonds will be loaned to Willow Creek Apartments, L.P., a limited partnership, or a related person or affiliate thereof (the "Borrower") to finance a portion of the costs of acquiring, constructing and equipping a multifamily housing development (the "Development") described as follows: 248-unit multifamily residential rental development to be located at 11743 Northpointe Boulevard, Harris County, Texas. The Development initially will be owned by the Borrower.

All interested parties are invited to attend such public hearing to express their views with respect to the Development and the issuance of the Bonds. Questions or requests for additional information may be directed to Robbye Meyer at the Texas Department of Housing and Community Affairs, 507 Sabine, Austin, Texas 78701; (512) 475-2213; and/or robbye.meyer@tdhca.state.tx.us.

Persons who intend to appear at the hearing and express their views are invited to contact Robbye Meyer in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Robbye Meyer prior to the date scheduled for the hearing. Individuals who require a language interpreter for the hearing should contact Robbye Meyer at least three days prior to the hearing date. Personas que hablan español y requieren un intérprete, favor de llamar a Jorge Reyes al siguiente número (512) 475-4577 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

Individuals who require auxiliary aids in order to attend this meeting should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943 or Relay Texas at (800) 735-2989 at least two days before the meeting so that appropriate arrangements can be made.

TRD-200504189
Edwina P. Carrington
Executive Director
Texas Department of Housing and Community Affairs
Filed: September 20, 2005

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Notice of Public Hearing

Multifamily Housing Revenue Bonds (Coral Hills Apartments) Series 2005

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Issuer") at Pilgrim Elementary, 3315 Barrington Street, Houston, Texas 77056, at 6:00 p.m. on October 20, 2005 with respect to an issue of tax-exempt multifamily residential rental development revenue bonds in an aggregate principal amount not to exceed $8,000,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series (the "Bonds"), by the Issuer. The proceeds of the Bonds will be loaned to Coral Hill Apartments, Ltd., a limited partnership, or a related person or affiliate thereof (the "Borrower") to finance a portion of the costs of acquiring, equipping and rehabilitating a multifamily housing development (the "Development") described as follows: 174-unit multifamily residential rental development to be located at 6363 Beverly Hill Street, Harris County, Texas. The Development initially will be owned by the Borrower.

All interested parties are invited to attend such public hearing to express their views with respect to the Development and the issuance of the Bonds. Questions or requests for additional information may be directed to Robbye Meyer at the Texas Department of Housing and Community Affairs, 507 Sabine, Austin, Texas 78701; (512) 475-2213; and/or robbye.meyer@tdhca.state.tx.us.

Persons who intend to appear at the hearing and express their views are invited to contact Robbye Meyer in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Robbye Meyer prior to the date scheduled for the hearing. Individuals who require a language interpreter for the hearing should contact Robbye Meyer at least three days prior to the hearing date. Personas que hablan español y requieren un intérprete, favor de llamar a Jorge Reyes al siguiente número (512) 475-4577 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

Individuals who require auxiliary aids in order to attend this meeting should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943 or Relay Texas at (800) 735-2989 at least two days before the meeting so that appropriate arrangements can be made.

TRD-200504198
Edwina P. Carrington
Executive Director
Texas Department of Housing and Community Affairs
Filed: September 21, 2005

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Texas Department of Insurance

Notice of Application by a Small Employer Health Benefit Plan Issuer to be a Risk-Assuming Health Benefit Plan Issuer

Notice is given to the public of the application of the listed small employer health benefit plan issuer to be a risk-assuming health benefit plan issuer under §1501.312, Texas Insurance Code. A small employer health benefit plan issuer is defined by §1501.002(16), Texas Insurance Code, as a health benefit plan issuer offering, delivering, issuing for delivery, or renewing health benefit plans subject to Subchapters C - H of Chapter 1501, Texas Insurance Code. A risk-assuming health benefit plan issuer is defined by §1501.301(4), Texas Insurance Code, as a small employer health benefit plan issuer that does not participate in the Texas Health Reinsurance System. The following small employer health benefit plan issuer has applied to be a risk-assuming health benefit plan issuer:

Pacificare Life and Health Insurance Company

The application is subject to public inspection at the offices of the Texas Department of Insurance, Legal & Compliance Division - Archie Clayton, 333 Guadalupe, Tower I, Room 860, Austin, Texas.

If you wish to comment on the application of Pacificare Life and Health Insurance Company to be a risk-assuming health benefit plan issuer, you must submit your written comments within 60 days after publication of this notice in the *Texas Register* to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P. O. Box 149104, Austin, Texas 78714-91204. Upon consideration of the application and comments, if the Commissioner is satisfied that all requirements of law have been met, the Commissioner or his designee may take action to approve the applicant to be a risk-assuming health benefit plan issuer.

TRD-200504180
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: September 19, 2005

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Notice of Application by a Small Employer Health Benefit Plan Issuer to be a Risk-Assuming Health Benefit Plan Issuer

Notice is given to the public of the application of the listed small employer health benefit plan issuer to be a risk-assuming health benefit plan issuer under §1501.312, Texas Insurance Code. A small employer health benefit plan issuer is defined by §1501.002(16), Texas Insurance Code, as a health benefit plan issuer offering, delivering, issuing for delivery, or renewing health benefit plans subject to Subchapters C - H of Chapter 1501, Texas Insurance Code. A risk-assuming health benefit plan issuer is defined by §1501.301(4), Texas Insurance Code, as a small employer health benefit plan issuer that does not participate in the Texas Health Reinsurance System. The following small employer health benefit plan issuer has applied to be a risk-assuming health benefit plan issuer:

Pacificare Life Assurance Company

The application is subject to public inspection at the offices of the Texas Department of Insurance, Legal & Compliance Division - Archie Clayton, 333 Guadalupe, Tower I, Room 860, Austin, Texas.

If you wish to comment on the application of Pacificare Life Assurance Company to be a risk-assuming health benefit plan issuer, you must submit your written comments within 60 days after publication of this notice in the *Texas Register* to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P. O. Box 149104, Austin, Texas 78714-91204. Upon consideration of the application and comments, if the Commissioner is satisfied that all requirements of law have been met, the Commissioner or his designee may take action to approve the applicant to be a risk-assuming health benefit plan issuer.

TRD-200504181
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: September 19, 2005

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Notice of Application by a Small Employer Health Benefit Plan Issuer to be a Risk-Assuming Health Benefit Plan Issuer

Notice is given to the public of the application of the listed small employer health benefit plan issuer to be a risk-assuming health benefit plan issuer under §1501.312, Texas Insurance Code. A small employer health benefit plan issuer is defined by §1501.002(16), Texas Insurance

Code, as a health benefit plan issuer offering, delivering, issuing for delivery, or renewing health benefit plans subject to Subchapters C - H of Chapter 1501, Texas Insurance Code. A risk-assuming health benefit plan issuer is defined by §1501.301(4), Texas Insurance Code, as a small employer health benefit plan issuer that does not participate in the Texas Health Reinsurance System. The following small employer health benefit plan issuer has applied to be a risk-assuming health benefit plan issuer:

Time Insurance Company, formerly known as Fortis Insurance Company

The application is subject to public inspection at the offices of the Texas Department of Insurance, Legal & Compliance Division - Archie Clayton, 333 Guadalupe, Tower I, Room 860, Austin, Texas.

If you wish to comment on the application of Time Insurance Company to be a risk-assuming health benefit plan issuer, you must submit your written comments within 60 days after publication of this notice in the *Texas Register* to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P. O. Box 149104, Austin, Texas 78714-91204. Upon consideration of the application and comments, if the Commissioner is satisfied that all requirements of law have been met, the Commissioner or his designee may take action to approve the applicant to be a risk-assuming health benefit plan issuer.

TRD-200504179
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: September 19, 2005

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Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application for incorporation in Texas of STANLEY WALKER AND ASSOCIATES, INC., a domestic third party administrator. The home office is BROWNWOOD, TEXAS.

Any objections must be filed within 20 days after this notice is published in the *Texas Register*, addressed to the attention of Matt Ray, MC 107-1A, 333 Guadalupe, Austin, Texas 78701.

TRD-200504225
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: September 21, 2005

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Texas Lottery Commission

Instant Game Number 618 "Casino Cash Out"

1.0 Name and Style of Game.

A. The name of Instant Game No. 618 is "CASINO CASH OUT". The play style for Game One is "key number match". The play style for Game Two is "add up". The play style for Game Three is "Cards with tripler".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 618 shall be $5.00 per ticket.

1.2 Definitions in Instant Game No. 618.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: $5.00, $10.00, $20.00, $50.00, $100, $500, $1,000, $5,000, $50,000, 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, ONE DOT, TWO DOTS, THREE DOTS, FOUR DOTS, FIVE DOTS, SIX DOTS, 2 DIAMOND SYMBOL, 3 DIAMOND SYMBOL, 4 DIAMOND SYMBOL, 5 DIAMOND SYMBOL, 6 DIAMOND SYMBOL, 7 DIAMOND SYMBOL, 8 DIAMOND SYMBOL, 9 DIAMOND SYMBOL, 10 DIAMOND SYMBOL, JACK DIAMOND SYMBOL, QUEEN DIAMOND SYMBOL, KING DIAMOND SYMBOL, ACE DIAMOND SYMBOL, 2 CLUB SYMBOL, 3 CLUB SYMBOL, 4 CLUB SYMBOL, 5 CLUB SYMBOL, 6 CLUB SYMBOL, 7 CLUB SYMBOL, 8 CLUB SYMBOL, 9 CLUB SYMBOL, 10 CLUB SYMBOL, JACK CLUB SYMBOL, QUEEN CLUB SYMBOL, KING CLUB SYMBOL, ACE CLUB SYMBOL, 2 HEART SYMBOL, 3 HEART SYMBOL, 4 HEART SYMBOL, 5 HEART SYMBOL, 6 HEART SYMBOL, 7 HEART SYMBOL, 8 HEART SYMBOL, 9 HEART SYMBOL, 10 HEART SYMBOL, JACK HEART SYMBOL, QUEEN HEART SYMBOL, KING HEART SYMBOL, ACE HEART SYMBOL, 2 SPADE SYMBOL, 3 SPADE SYMBOL, 4 SPADE SYMBOL, 5 SPADE SYMBOL, 6 SPADE SYMBOL, 7 SPADE SYMBOL, 8 SPADE SYMBOL, 9 SPADE SYMBOL, 10 SPADE SYMBOL, JACK SPADE SYMBOL, QUEEN SPADE SYMBOL, KING SPADE SYMBOL and ACE SPADE SYMBOL.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 618 - 1.2D

PLAY SYMBOL	CAPTION
$5.00	FIVE$
$10.00	TEN$
$20.00	TWENTY
$50.00	FIFTY
$100	ONE HUN
$500	FIV HUN
$1,000	ONE THOU
$5,000	FIV THOU
$50,000	50 THOU
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
ONE DOT SYMBOL	ONE
TWO DOT SYMBOL	TWO
THREE DOT SYMBOL	THREE
FOUR DOT SYMBOL	FOUR
FIVE DOT SYMBOL	FIVE
SIX DOT SYMBOL	SIX
2 DIAMOND SYMBOL	2DMD
3 DIAMOND SYMBOL	3DMD
4 DIAMOND SYMBOL	4DMD
5 DIAMOND SYMBOL	5DMD
6 DIAMOND SYMBOL	6DMD
7 DIAMOND SYMBOL	7DMD
8 DIAMOND SYMBOL	8DMD
9 DIAMOND SYMBOL	9DMD
10 DIAMOND SYMBOL	10DMD
JACK DIAMOND SYMBOL	JDMD
QUEEN DIAMOND SYMBOL	QDMD
KING DIAMOND SYMBOL	KDMD
ACE DIAMOND SYMBOL	ADMD
2 CLUB SYMBOL	2CBL
3 CLUB SYMBOL	3CLB
4 CLUB SYMBOL	4CLB
5 CLUB SYMBOL	5CLB
6 CLUB SYMBOL	6CLB
7 CLUB SYMBOL	7CLB

8 CLUB SYMBOL	8CLB
9 CLUB SYMBOL	9CLB
10 CLUB SYMBOL	10CLB
JACK CLUB SYMBOL	JCLB
QUEEN CLUB SYMBOL	QCLB
KING CLUB SYMBOL	KCLB
ACE CLUB SYMBOL	ACLB
2 HEART SYMBOL	2HRT
3 HEART SYMBOL	3HRT
4 HEART SYMBOL	4HRT
5 HEART SYMBOL	5HRT
6 HEART SYMBOL	6HRT
7 HEART SYMBOL	7HRT
8 HEART SYMBOL	8HRT
9 HEART SYMBOL	9HRT
10 HEART SYMBOL	10HRT
JACK HEART SYMBOL	JHRT
QUEEN HEART SYMBOL	QHRT
KING HEART SYMBOL	KHRT
ACE HEART SYMBOL	AHRT
2 SPADE SYMBOL	2SPD
3 SPADE SYMBOL	3SPD
4 SPADE SYMBOL	4SPD
5 SPADE SYMBOL	5SPD
6 SPADE SYMBOL	6SPD
7 SPADE SYMBOL	7SPD
8 SPADE SYMBOL	8SPD
9 SPADE SYMBOL	9SPD
10 SPADE SYMBOL	10SPD
JACK SPADE SYMBOL	JSPD
QUEEN SPADE SYMBOL	QSPD
KING SPADE SYMBOL	KSPD
ACE SPADE SYMBOL	ASPD

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 618 - 1.2E

CODE	PRIZE
FIV	$5.00
TEN	$10.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $5.00, $10.00 or $20.00.

H. Mid-Tier Prize - A prize of $50.00, $100 or $500.

I. High-Tier Prize - A prize of $1,000, $5,000 or $50,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (618), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 075 within each pack. The format will be: 618-0000001-001.

L. Pack - A pack of "CASINO CASH OUT" Instant Game tickets contains 75 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket 001 will be shown on the front of the pack; the back of ticket 075 will be revealed on the back of the pack. All packs will be tightly shrink-wrapped. There will be no breaks between the tickets in a pack. Every other book will reverse i.e., reverse order will be: the back of ticket 001 will be shown on the front of the pack and the front of ticket 075 will be shown on the back of the pack.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "CASINO CASH OUT" Instant Game No. 618 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "CASINO CASH OUT" Instant Game is determined once the latex on the ticket is scratched off to expose 71 (seventy-one) Play Symbols. In GAME ONE, if a player matches YOUR NUMBER play symbol to any of the 5 Wheel Numbers play symbols the player wins prize shown for that number. In GAME TWO, scratch the entire play area, if a player's total is 7 or 11 within a roll the player wins prize shown for that roll. In GAME THREE, if a player reveals two identical play symbols to create a matching pair within a hand the player wins prize shown for that hand. If a player reveals three identical play symbols to create 3 of a kind within a hand the player wins triple the prize shown for that hand. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 71 (seventy-one) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 71 (seventy-one) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 71 (seventy-one) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 71 (seventy-one) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the

Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets within a book will not have identical patterns.

B. GAME ONE: Players can win up to five (5) times in this play area.

C. GAME ONE: No duplicate non-winning WHEEL NUMBERS on a ticket.

D. GAME ONE: Non-winning prize symbols will not match a winning prize symbol in this play area.

E. GAME ONE: Wheel Numbers will never equal the corresponding Prize symbol.

F. GAME ONE: No prize symbol will appear more than 2 times in a non-winning play area.

G. GAME TWO: Players can win up to ten (10) times in this play area.

H. GAME TWO: No prize amount will appear more than two (2) times in this play area except on multiple win tickets.

I. GAME TWO: Non-winning tickets will never have a total of seven (7) or eleven (11) within the same roll.

J. GAME TWO: On winning tickets, non-winning games will have different prize amounts from the winning prize amount in this play area.

K. GAME THREE Players can win up five (5) times.

L. GAME THREE: An Ace will never appear with cards 2, 3, 4 and 5 in the same hand.

M. GAME THREE: A wraparound Straight will never appear (e.g. Q, K, A, 2, 3) in the same hand.

N. GAME THREE: No two non-winning hands on a single ticket will contain five cards of the same value in any order (e.g. 2, 5, 7, J, K on one Hand and 7, 2, J, K, 5 on another Hand in any suit can never occur on the same ticket).

O. GAME THREE: All cards on a single ticket will be unique.

P. GAME THREE: On winning hands, the only poker hand categories allowed are one pair and three of a kind. No winning hand will ever contain a non-winning poker combination in any order (i.e. 2 pair, straight, flush, full house, straight flush, royal flush, 4 of a kind).

Q. GAME THREE: On non-winning hands, no hand will ever contain a non-winning poker combination in any order (i.e. 2 pair, straight, flush, full house, straight flush, royal flush, 4 of a kind).

R. GAME THREE: On winning tickets, all non-winning prize amounts to be different from winning prize amounts in this play area.

S. GAME THREE: Non-winning games will not contain more than two like prize amounts.

2.3 Procedure for Claiming Prizes.

A. To claim a "CASINO CASH OUT" Instant Game prize of $5.00, $10.00, $20.00, $50.00, $100 or $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $50.00, $100 or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "CASINO CASH OUT" Instant Game prize of $1,000, $5,000 or $50,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "CASINO CASH OUT" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "CASINO

CASH OUT" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "CASINO CASH OUT" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 6,000,000 tickets in the Instant Game No. 618. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 618 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$5	800,000	7.50
$10	640,000	9.38
$20	120,000	50.00
$50	96,900	61.92
$100	12,500	480.00
$500	2,000	3,000.00
$1,000	300	20,000.00
$5,000	10	600,000.00
$50,000	3	2,000,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 3.59. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 618 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 618, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200504199

Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: September 21, 2005

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Manufactured Housing Division

Notice of Administrative Hearing

Wednesday, October 5, 2005, 1:00 p.m.

State Office of Administrative Hearings, William P. Clements Building, 300 West 15th Street, 4th Floor,

Austin, Texas

AGENDA

Administrative Hearing before an administrative law judge of the State Office of Administrative Hearings in the matter of the complaint of the Texas Department of Housing and Community Affairs (Department) vs. David Barroso (DBA Sweet Homes) to hear alleged violations of §8(d) (currently found at §1201.451 of the Occupation Code), and §7(j)(3) (requirement to deliver title to consumer currently found at §1201.551(a)(3) of the Occupation Code) by selling a used manufactured home, without the appropriate, timely transfer of a good and marketable title and by not properly complying with the initial report and orders of the Director and providing the Department with evidence of compliance. SOAH 332-06-0118. Department MHD2005001116-LRV.

Contact: Jim R. Hicks, P.O. Box 12489, Austin, Texas 78711-2489, (512) 475-3589, jhicks@tdhca.state.tx.us.

TRD-200504098
Timothy K. Irvine
Executive Director
Manufactured Housing Division
Filed: September 16, 2005

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Texas Parks and Wildlife Department

Notice of Easement Request

A public meeting of the Texas Parks and Wildlife Commission will be held beginning at 9:00 a.m., on November 3, 2005, at 4200 Smith School Road, Austin, Texas. Among the items to be considered for action at this meeting is a proposed grant by TPWD to the City of Galveston of an easement within Galveston Island State Park to allow installation of an underground water line. Before taking action on this matter, the Commission will take public comment regarding the proposed transaction. Prior to the date of the meeting, public comment on this matter may be submitted to Corky Kuhlmann, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744 or by email at corky.kuhlmann@tpwd.state.tx.us.

TRD-200504211
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Filed: September 21, 2005

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Notice of Land Donation

A public meeting of the Texas Parks and Wildlife Commission will be held beginning at 9:00 a.m., on November 3, 2005, at 4200 Smith School Road, Austin, Texas. Among the items to be considered for action at this meeting is the proposed acceptance by TPWD of a donation of approximately 62 acres at Sheldon Lake State Park and Environmental Learning Center and approximately 100 acres and three lots at the San Jacinto Battleground State Historic Site. Before taking action, the Commission will take public comment regarding the proposed transactions. Prior to the date of the meeting, public comment may be submitted to Jack Bauer, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744 or by email at jack.bauer@tpwd.state.tx.us.

TRD-200504213
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Filed: September 21, 2005

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Notice of Oil and Gas Lease

A public meeting of the Texas Parks and Wildlife Commission will be held beginning at 9:00 a.m., on November 3, 2005, at 4200 Smith School Road, Austin, Texas. Among the items to be considered for action at this meeting is a proposal that a recommendation be forwarded to the Board for Lease at the General Land Office to nominate four Texas Parks and Wildlife Department (TPWD) sites for oil and gas lease. The oil and gas on these sites are owned by TPWD. Funds generated from the lease activity will be deposited in the appropriate TPWD fund. The proposed recommendation to the Board for Lease will request that all reasonable actions be taken to minimize harm to the property. Before taking action on this matter, the Commission will take public comment regarding the proposed transactions. The sites being recommended for oil and gas leases are as follows: Mustang Island State Park (Nueces County, Port Aransas, Texas); Bentsen Rio Grande Valley State Park (Hidalgo County, Mission, Texas); Cleburne State Park (Johnson County, Cleburne, Texas); Las Palomas Wildlife Management Area - La Grulla Unit (Starr County, La Grulla, Texas). Prior to the date of the meeting, public comment may be submitted to Jack Bauer, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744 or by email at jack.bauer@tpwd.state.tx.us.

TRD-200504210
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Filed: September 21, 2005

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Request for Comment - Land Purchase

A public meeting of the Texas Parks and Wildlife Commission will be held beginning at 9:00 a.m., on November 3, 2005, at 4200 Smith School Road, Austin, Texas. Among the items to be considered for action at this meeting is a proposed purchase by TPWD of approximately 71 acres adjacent to Bastrop State Park. Before taking action on this matter, the Commission will take public comment regarding the proposed transaction. Prior to the date of the meeting, public comment may be submitted to Corky Kuhlmann, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744 or by email at corky.kuhlmann@tpwd.state.tx.us.

TRD-200504212
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Filed: September 21, 2005

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Public Utility Commission of Texas

Notice of Application for a Certificate to Provide Retail Electric Service

Notice is given to the public of the filing with the Public Utility Commission of Texas (Commission) of an application on September 15, 2005, for retail electric provider (REP) certification, pursuant to Public Utility Regulatory Act (PURA) §§39.101 - 39.109. A summary of the application follows.

Docket Title and Number: Application of BVista Energy, L.P. dba Blue Vista Energy for Retail Electric Provider (REP) Certification, Docket Number 31648 before the Commission.

Applicant's requested service area by geography includes the entire State of Texas.

Persons wishing to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than October 7, 2005. Hearing and speech-impaired individuals with text telephone (TTY) may contact the Commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 31648.

TRD-200504187
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 20, 2005

♦ ♦ ♦

Notice of Application for Certificate of Convenience and Necessity for a Proposed Transmission Line in Fort Bend, Wharton, Matagorda, and Brazoria Counties, Texas

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on September 19, 2005, for a certificate of convenience and necessity for a proposed transmission line within Fort Bend, Wharton, Matagorda, and Brazoria Counties, Texas.

Docket Style and Number: Application of CenterPoint Energy Houston Electric, LLC (CenterPoint Energy) for a Certificate of Convenience and Necessity (CCN) for a Proposed 345 kV Transmission Line within Fort Bend, Wharton, Matagorda, and Brazoria Counties, Texas. Docket Number 31591.

The Application: The project is designated the 345 kV Hillje Project. CenterPoint Energy stated that the proposed 345 kV transmission facilities are needed in order to increase the power transfer capability into the Houston area, thereby significantly reducing transmission constraints and improving reliability. The Electric Reliability Council of Texas (ERCOT) has designated this project as "critical" to the reliability of the system.

This application includes facilities subject to the Coastal Management Program and must be consistent with the Coastal Management program goals and policies.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. The deadline for intervention in this proceeding is November 3, 2005. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 31591.

TRD-200504195
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 20, 2005

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Notice of Application for Relinquishment of a Service Provider Certificate of Operating Authority

On September 12, 2005, Laredo Communications Co., Ltd. filed an application with the Public Utility Commission of Texas (commission) to relinquish its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60472. Applicant intends to relinquish its certificate.

The Application: Application of Laredo Communications Co., Ltd. to Relinquish its Service Provider Certificate of Operating Authority, Docket Number 31624.

Persons wishing to comment on the action sought should contact the commission by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than October 5, 2005. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 31624.

TRD-200504076
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 14, 2005

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Notice of Application for Relinquishment of a Service Provider Certificate of Operating Authority

On September 16, 2005, Comm South Companies, Incorporated filed an application with the Public Utility Commission of Texas (commission) to relinquish its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60012. Applicant intends to relinquish its certificate.

The Application: Application of Comm South Companies, Incorporated to Relinquish its Service Provider Certificate of Operating Authority, Docket Number 31658.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than October 7, 2005. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 31658.

TRD-200504188
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 20, 2005

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Notice of Filing Seeking Approval of Intrastate Switched Access Rates

Application: *Application of nii communications, Ltd. to Revise Texas PUC Tariff No. 1 for Originating and Terminating Intrastate Switched Access Rates*, Tariff Control Number 31702.

Summary: On September 1, 2005, nii communications, Ltd. (nii) filed revised tariff pages pursuant to P.U.C. Substantive Rule §26.223(e) seeking commission approval of its originating and terminating intrastate switched access rates. According to nii communications, Ltd., switched access rates are applicable to interexchange carriers

who use nii's local exchange facilities to originate and/or terminating interexchange calls. If approved, nii's filing will have no effect on nii's current intrastate switched access revenues nor cause any change to those rates currently charged by nii to its interexchange customers.

nii proposed to mirror the rates for the same services currently set forth in the Texas Access Service Tariff of Southwestern Bell Telephone Company.

By this filing, nii seeks approval to establish its existing rates.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Tariff Control Number 31702.

TRD-200504208
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 21, 2005

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Notice of Intent to File LRIC Study Pursuant to P.U.C. Substantive Rule §26.214

Notice is given to the public of the filing on September 19, 2005, with the Public Utility Commission of Texas (commission), a notice of intent to file a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.214. The Applicant will file the LRIC study on September 29, 2005.

Docket Title and Number: CenturyTel of San Marcos, Inc.'s Application for Approval of LRIC Study For a Promotion of Business and Residence Service Pursuant to P.U.C. Substantive Rule §26.214, Docket Number 31684.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 31684. Written comments or recommendations should be filed no later than 45 days after the date of a sufficient study and should be filed at the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free 1-800-735-2989. All comments should reference Docket Number 31684.

TRD-200504196
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 20, 2005

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Notice of Petition for Rulemaking

On September 20, 2005, Texas Ratepayers' Organization to Save Energy, et al., filed a petition to adopt a rule to implement Public Utility Regulatory Act §39.905(f), as amended by Senate Bill 712, to provide Targeted Energy Efficiency Programs.

Petition: *Petition of Texas Ratepayers' Organization to Save Energy, et al, to Adopt a Rule to Implement Paragraph (f) of Senate Bill 712 to Provide Targeted Energy Efficiency Programs*, Project Number 31705.

Summary: The Petition was filed by Texas Ratepayers' Organization to Save Energy (Texas ROSE), Texas Legal Services Center (TLSC), Texas Association of Community Action Agencies (TACAA), and seventeen weatherization agencies whose clients will be affected by the implementation of the provision of Senate Bill 712 that is codified at PURA §39.905(f). The Petitioners asserted that the targeted energy efficiency program described in PURA §39.903 is the only statewide program that works to improve energy-efficiency for the customers least able to afford the improvements and that the proposed rule will assure that targeted energy-efficiency programs are implemented by January 1, 2006, as required by Senate Bill 712.

Pursuant to Administrative Procedure Act §2001.021, the commission shall either deny the petition in writing, stating its reasons for denial, or initiate a rulemaking proceeding not later than the 60th day after the date the petition is filed.

Comments on the petition may be filed on or before Friday, October 21, 2005. Copies of the petition may be obtained from the commission's Central Records, William B. Travis Building, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. All inquiries and comments concerning this petition for rulemaking should refer to Project Number 31705.

Persons with questions may contact the commission at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989.

TRD-200504220
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 21, 2005

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Notice of Petition for Waiver of Denial of Request for NXX Code

Notice is given to the public of the filing with the Public Utility Commission of Texas of a petition on September 16, 2005, for waiver of denial by the North American Numbering Plan Administration (NANPA) Pooling Administrator (PA) of Southwestern Bell Telephone, L.P.'s, doing business as SBC Texas (SBC), request for two full codes of numbers to satisfy the request of the Fort Worth Independent School District in Fort Worth, Texas.

Docket Title and Number: Petition of Southwestern Bell Telephone, L.P., doing business as SBC Texas, for Waiver of Denial of Numbering Resources - Fort Worth Rate Center. Docket Number 31669 .

The Application: SBC submitted a petition to the Pooling Administrator (PA) to provide it with two full codes of numbers to satisfy the request of the Fort Worth Independent School District in Fort Worth, Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than October 7, 2005. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 31669.

TRD-200504219

Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 21, 2005

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Public Notice of Workshop on the Independent Market Monitor

The staff of the Public Utility Commission of Texas (commission) will hold a workshop regarding its Independent Market Monitor rulemaking on Thursday, October 6, 2005, at 9:30 a.m. in the Commissioners' Hearing Room, located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Project Number 31111, *Rulemaking to Address an Independent Market Monitor for the Wholesale Electricity Market in ERCOT*, has been established for this proceeding.

Questions concerning the workshop or this notice should be referred to Danielle Jaussaud, (512) 936-7396. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200504207
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 21, 2005

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Texas Residential Construction Commission

Notice of Applications for Registration as Approved Third-Party Warranty Company

The Texas Residential Construction Commission (commission) adopted rules regarding the approval and registration of third-party warranty companies at 10 TAC §§303.250-303.266. The new rules were adopted pursuant to new Chapter 430, Property Code (Act effective Sept. 1, 2003, 78th Leg., R.S., ch. 458, §1.01), which provides that builders may elect to provide warranties through third-party warranty companies approved by the commission. The commission rules for approval and registration of third-party warranty companies can be found on the commission's website at www.trcc.state.tx.us.

Title 10, Texas Administrative Code, §303.255 requires the commission to publish in the *Texas Register* notice of the application of each person seeking to become registered under this subchapter. The commission will accept public comment on each application for twenty-one (21) days after the date of publication of the notice. Information provided in response to this notice will be utilized in evaluating the applicants for approval. Approved third-party warranty companies will be listed on the commission's website.

Pursuant to 10 TAC §303.255, the commission hereby notices the application of:

Gulf Builders Risk Retention Group, Inc., doing business as Gulf Insured Warranty, 10235 W. Little York, Suite 260A, Houston, Texas 77040. The applicant has identified Kathleen Dockry, 10235 W. Little York, Suite 260A, Houston, Texas 77040, as its registered agent.

Interested persons may send written comments regarding this application to Susan K. Durso, General Counsel, The Texas Residential Construction Commission, P.O. Box 13144, Austin, TX 78711-3144. Comments regarding this application will be accepted for twenty-one (21) days following the date of publication of this notice in the *Texas Register*. Thereafter, the comments will not be considered as timely filed.

TRD-200504106
Christopher Burnett
Assistant General Counsel
Texas Residential Construction Commission
Filed: September 16, 2005

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Rio Grande Council of Governments

Request for Qualifications - Training for Rural Criminal Justice Professionals

The Rio Grande Council of Governments (RGCOG) desires to contract with an independent consultant or Academic Provider to facilitate and conduct Training for Rural Criminal Justice Professionals in the Far West Texas Region. A copy of the RGCOG Request for Qualification package may be obtained with a written request sent to:

Rio Grande Council of Governments

Attn: Marisa Quintanilla, Regional Services Manager

1100 N. Stanton, Ste. 610

El Paso, Texas 79902

Or, a request can be filed by fax to the following number: (915) 532-9385 - Attention: Marisa Quintanilla.

Completed proposals must be received by the RGCOG no later than 4:00 p.m. MST on **October 14, 2005** in order to be considered. RGCOG reserves the right to negotiate with any and all consultants or firms that submit proposals as per the Government Code, §2254.

The RGCOG is an Affirmative Action/Equal Opportunity Employer.

TRD-200504191
Judge Jake Brisbin, Jr.
Executive Director
Rio Grande Council of Governments
Filed: September 20, 2005

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Texas Department of Transportation

Aviation Division - Request for Proposal for Aviation Engineering Services

The City of Wharton, through its agent, the Texas Department of Transportation (TxDOT), intends to engage an architectural/engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional aviation architectural and engineering design services described below.

Airport Sponsor: City of Wharton, Wharton Regional Airport. TxDOT CSJ No. 06TBWHRTN. Scope: Provide architectural/engineering services to design and construct terminal building and associated appurtenances at the Wharton Regional Airport.

The HUB goal is set at **0%**. TxDOT Project Manager is John Greer, P.E.

To assist in your proposal preparation, the most recent Airport Layout Plan and 5010 drawing are available online at **www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm** by selecting "Wharton Regional Airport".

Interested firms shall utilize the latest version of Form AVN-550, titled "Aviation Engineering Services Proposal". The form may be requested from TxDOT Aviation Division, 125 E. 11th Street, Austin,

Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be e-mailed by request or downloaded from the TxDOT web site, URL address **http://www.dot.state.tx.us/avn/avn550.doc**. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT. ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is an MS Word Template.

Seven completed, unfolded copies of Form AVN-550 must be postmarked by U. S. Mail by midnight October 24, 2005. Mailing address: TxDOT Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483. Overnight delivery must be received by 4:00 p.m. on October 25, 2005. Overnight address: TxDOT Aviation Division, 200 E. Riverside Drive, Austin, Texas, 78704. Hand delivery must be received by 4:00 p.m. October 25, 2005. Hand delivery address: 150 E. Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704. Electronic facsimiles or forms sent by e-mail will not be accepted. Please mark the envelope of the forms to the attention of Edie Stimach.

The consultant selection committee will be composed of local government members. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The criteria for evaluating proposals can be found at **www.dot.state.tx.us/business/avn-consultinfo.htm**. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews of the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following the interviews.

If there are any procedural questions, please contact Edie Stimach, Grant Manager, or John Greer, P.E., Project Manager, for technical questions at 1-800-68-PILOT (74568).

TRD-200504186
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: September 20, 2005

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Public Hearing - 43 TAC §29.48, Boarding Priorities; and Extension of Comment Period Deadline

Pursuant to the Administrative Procedure Act, Government Code, Chapter 2001, the Texas Department of Transportation will conduct a public hearing to receive comments concerning proposed rules governing boarding priorities for state-owned ferries. The text of the proposed rule appeared in the September 9, 2005, issue of the *Texas Register* (30 TexReg 5773 - 5775). The proposed rule hearing that was originally scheduled for September 21, 2005 on this matter was cancelled due to the approach of hurricane Rita. The rescheduled public hearing concerning 43 TAC §29.48, Boarding Priorities, will be held from 6:00 to 8:00 p.m. on Thursday October 13, 2005, at Ball High School, 4115 Avenue O, Galveston, Texas and will be conducted in accordance with the procedures specified in 43 TAC §1.5. Those desiring to make comments or presentations may register starting at 5:30 p.m. Any interested persons may appear and offer comments, either orally or in writing; however, questioning of those making presentations will be reserved exclusively to the presiding officer as may be necessary to ensure a complete record. While any person with pertinent comments will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time and repetitive content. Organizations, associations, or groups are encouraged to present their commonly held views and identical or similar comments through a representative member when possible. Comments on the proposed rule text should include appropriate citations to sections, subsections, paragraphs, etc. for proper reference. Any suggestions or requests for alternative language or other revisions to the proposed rule text should be submitted in written form. Presentations must remain pertinent to the issues being discussed. A person may not assign a portion of his or her time to another speaker. Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are requested to contact Randall Dillard, Director, Public Information Office, 125 East 11th Street, Austin, Texas 78701-2483, (512) 463-8588 at least two working days prior to the hearing so that appropriate services can be provided.

Written comments on the proposed rule were originally due by 5:00 p.m. on October 10, 2005. The deadline for receipt of comments has been extended to 5:00 p.m. on October 24, 2005. Written comments on the proposed rule may be submitted to Zane Webb, P.E., Director, Maintenance Division, 125 East 11th Street, Austin, Texas 78701-2483.

TRD-200504209
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: September 21, 2005

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Texas Water Development Board

Request for Applications for Flood Protection Planning

The Texas Water Development Board (Board) requests, pursuant to 31 Texas Administrative Code (TAC) §355.3, the submission of applications leading to the possible award of contracts to develop flood protection plans for areas in Texas from political subdivisions with the legal authority to plan for and abate flooding and which participate in the National Flood Insurance Program.

Flood protection planning applications may be submitted by eligible political subdivisions from any area of the State and will be considered and evaluated. In addition, applicants must supply a map of the geographical planning area to be studied.

Description of Planning Purpose and Objectives. The purpose of the flood protection planning grant program is for the state to assist local governments to develop flood protection plans for entire major or minor watersheds (as opposed to local drainage areas) that provide protection from flooding through structural and non-structural measures as described in 31 TAC §355.2. Planning for flood protection will include studies and analyses to determine and describe problems resulting from or relating to flooding and the views and needs of the affected public relating to flooding problems. Potential solutions to flooding problems will be identified, and the benefits and costs of these solutions will be estimated. From the planning analysis, feasible solutions to flooding problems will be recommended. The flood protection planning study should also include an assessment of the environmental and cultural resources of the planning area as necessary to evaluate the flood control

alternatives being considered. Solutions for localized drainage problems are not eligible for grant funding.

Description of Funding Consideration. Up to $1,000,000 has been initially authorized for Fiscal Year 2006 assistance for flood protection planning from the Board's Research and Planning Fund. Up to 50 percent funding may be provided to individual applicants, with up to 75 percent funding available to areas identified in 31 TAC §355.10(a) as economically disadvantaged. In the event that acceptable applications are not submitted, the Board retains the right to not award contract funds.

Deadline, Review Criteria, and Contact Person for Additional Information. Ten double-sided copies of a complete flood protection planning grant application including the required attachments must be filed with the Board prior to 5:00 p.m., December 15, 2005. Applications may be directed either in person to Ms. Phyllis Thomas, Texas Water Development Board, Stephen F. Austin Building, 1700 North Congress Avenue, Austin, Texas or by mail to Ms. Phyllis Thomas, Texas Water Development Board, P.O. Box 13231 - Capitol Station, Austin, Texas 78711-3231.

Applications will be evaluated according to 31 TAC §355.5. All potential applicants can contact the Board to obtain these rules and an application instruction sheet. Requests for information, the Board's rules and instruction sheet covering the Research and Planning Fund may be directed to Mr. Gilbert Ward at the preceding mailing address, or by email at gilbert.ward@twdb.state.tx.us, or by calling (512) 463-6418. This information can also be found on the Internet at the following address: http://www.twdb.state.tx.us.

TRD-200504217
Ron Pigott
Attorney
Texas Water Development Board
Filed: September 21, 2005

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Request for Applications for Regional Water and Wastewater Facility Planning

The Texas Water Development Board (Board) requests, pursuant to 31 Texas Administrative Code (TAC) Chapter 355, Subchapter A, the submission of planning applications leading to the possible award of contracts for regional facility planning. This planning will evaluate and determine the most feasible alternatives to meet water supply and/or wastewater facility needs, estimate the costs associated with implementing feasible water supply and/or wastewater facility alternatives, and identify institutional arrangements to provide water supply and/or wastewater services for areas in Texas. In order to receive a grant, the applicant must have the authority to plan, implement, and operate regional water supply and/or wastewater facilities.

Planning applications may be submitted by eligible political subdivisions from any area of the State. To be eligible for funding at least two political subdivisions must participate in the proposed study and more than one service area must be evaluated for feasibility of regional facilities. In addition, applicants must supply a map of the geographical planning area to be studied.

Description of Planning Purpose and Objectives. Note: Studies related to the development of regional water supply plans, the evaluation of water supply alternatives, and drought response plans as defined in Senate Bill 1, 75th Session, Texas Legislature are not eligible for funding under this Request for Applications. The purpose of this program is for the State to assist local governments to prepare plans that document water supply and/or wastewater service facility needs, identify feasible regional alternatives to meet water supply and/or wastewater facility needs, and present estimates of costs associated with providing regional water supply facilities and distribution lines and/or regional wastewater treatment plants and collection systems. The study should, at a minimum, include the following steps:

***** Develop Problem Statement;

***** Inventory Existing Conditions and Forecast Future Conditions and Needs;

***** Formulate Planning Alternatives;

***** Evaluate and Compare Each Planning Alternative; and

***** Select Best Planning Alternative.

A water conservation plan and a drought management plan must be developed to ensure that existing and future sources are used efficiently and as a basis for confirming demand projections of future need. The Board's population and water demand projections will be considered in preparing projections. Discrete phases to implement regional water supply and/or wastewater facilities to meet projected needs will be identified. Environmental, social, and cultural factors for possible solutions identified in the plan should be evaluated. Cost estimates will be made for each respective implementation phase to determine the capital, operation, and maintenance requirements for a 30-year planning period. Separate cost estimates will be made for each regional water supply and/or wastewater system component, including the water conservation program.

Description of Funding Consideration. Up to $1,000,000 has been initially authorized for FY 2006 assistance for regional facility planning from the Board's research and planning fund. Up to 50 percent funding may be provided to individual applicants, with up to 75 percent funding available to areas identified in 31 TAC §355.10(a) as economically disadvantaged. In the event that acceptable applications are not submitted, the Board retains the right to not award contract funds.

Deadline, Review Criteria, and Contact Person for Additional Information. Ten double-sided copies on recycled paper of a complete regional facility planning grant application including the required attachments must be filed with the Board prior to 5:00 p.m., December 15, 2005. Applications can be directed either in person to Ms. Phyllis Thomas, Texas Water Development Board, Stephen F. Austin Building, 1700 North Congress Avenue, Austin, Texas or by mail to Ms. Phyllis Thomas, Texas Water Development Board, P.O. Box 13231 - Capitol Station, Austin, Texas 78711-3231.

Applications will be evaluated according to 31 TAC §355.5. All potential applicants can contact the Board to obtain these rules and an application instruction sheet. Requests for information, the Board's rules and instruction sheet covering the research and planning fund may be directed to Ms. Carolyn Brittin at the preceding mailing address, by e-mail at carolyn.brittin@TWDB.state.tx.us or by calling (512) 475-0933. This information can be found on the Internet at the following address: http://www.twdb.state.tx.us.

TRD-200504218
Ron Pigott
Attorney
Texas Water Development Board
Filed: September 21, 2005

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How to Use the Texas Register

Information Available: The 14 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 30 (2005) is cited as follows: 30 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "30 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 30 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online through the Internet. The address is: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the Internet. For website subscription information, call the Texas Register at (800) 226-7199.

Texas Administrative Code

The ***Texas Administrative Code (TAC***) is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles (using Arabic numerals) and Parts (using Roman numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Table of TAC Titles Affected***. The table is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register*** (January 21, April 15, July 8, and October 7, 2005). If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with one or more ***Texas Register*** page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
40 TAC §3.704.....950, 1820

The ***Table of TAC Titles Affected*** is cumulative for each volume of the ***Texas Register*** (calendar year).